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federal register

WEDNESDAY, DECEMBER 29, 1976

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Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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rules and regulations

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

Clarity of Rulemaking Documents in the Federal Register

AGENCY: Administrative Committee of the FEDERAL REGISTER.

ACTION: Final rule.

SUMMARY: This rule prescribes format requirements for the preamble that accompanies the regulatory text of a proposed or final rulemaking document. These requirements are intended to improve the clarity of documents published in the FEDERAL REGISTER since the present preamble requirement has not resulted in clear, simple explanations of rulemaking documents.

Effective Date: April 1, 1977.

For Further Information Contact:

Martha Girard, Special Projects Unit, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408. (202–523–5240).

Supplementary Information: On August 5, 1976, the Administrative Committee of the FEDERAL REGISTER published a proposed rule (41 FR 32861) to revise the present preamble requirements for certain FEDERAL REGISTER documents (1 CFR 18.12). As the Committee stated at that time, the present requirement was adopted in 1972 to introduce some uniform compliance with the public information function of the FEDERAL REGISTER and to make the information published easier to understand. The primary purpose of the proposed change was to improve the public notice giving function of the FEDERAL REGISTER.

Virtually all of the 46 comments received in response to the proposed changes were favorable. Several commenters, while agreeing in principle with the proposal, raised questions or made suggestions that convinced the Committee that a number of changes from the proposed rule are warranted.

DISCUSSION OF MAJOR COMMENTS

WHAT SHALL WE NAME IT?

The Committee received a wide variety of suggested names for what has traditionally (at least in the legal community) been called the preamble. After considering all of the comments and suggestions, the Committee has concluded there is not sufficient agreement on any one name to justify "regulating" a new name. Therefore, the Committee intends to continue to use the term preamble.

SHOULD THE RULE APPLY TO ALL FEDERAL REGISTER DOCUMENTS?

The Committee's proposed revision of § 18.12 contained mandatory requirements for the opening part of each FEDERAL REGISTER document. After considering the comments received, the Committee has concluded that these requirements should not apply to documents published in the Notices Section of the FEDERAL REGISTER at this time. This will permit agencies to concentrate their initial efforts on proposed and final rule documents which in general have more legal significance and public impact. It will also permit the Office of the Federal Register to evaluate the effectiveness of the new format requirements in actual use and to determine whether the same format should apply to notice documents.

Another commenter suggested that the § 18.12 requirements should be strictly advisory and not mandatory. The Committee does not agree. The public notice giving function of the FEDERAL REGISTER requires, at a minimum, that each rulemaking document be intelligible. For the public to use the FEDERAL REGISTER, for the staff of the Office of the Federal Register to perform its indexing function, it is essential that each rulemaking document contain an adequate preamble.

Additionally, it was suggested that the agencies be permitted some latitude as to preamble format. The Committee considers that adequate flexibility exists to accommodate agency needs under the "Supplementary Information" section. The Committee believes that it is important to provide relative consistency within the first six items of the preamble. This will aid FEDERAL REGISTER users and will also make practical the proposed Weekly Digest which is currently in the planning stage. (See GSA Consumer Representation Plan, 41 FR 42862, September 28, 1976).

HOW MUCH DETAIL IS REQUIRED?

Two comments were received concerning the need for paragraph (d), which proposed to require the issuing agency to make a determination of the need for additional information in the public interest of the type described in paragraph (c). The requirement for the agency to make a determination of a need for additional detailed information has been incorporated into paragraph (c) and paragraph (d) has been dropped. In addition, paragraph (c) has been rewritten to make it clear that it is up to the issuing agency to determine how much information must be supplied to satisfy both the legal and public information requirements of FEDERAL REGISTER publication.

The Committee does not feel that the requirement for detailed background information should be mandatory for all documents. There are a significant number of simple and routine documents which do not require detailed information to fully inform the public of the agency action. The issuing agency is best qualified to identify the audience being addressed and to assure that each document communicates its intended message to that audience.

BURDEN

Several commenters requested clarification of the term "burden." One commenter suggested that paragraphs (c)(4) and (5) be revised "to incorporate a statement of consumer burden." Another commenter suggested that paragraphs (c)(4) and (5) be reversed and placed under the requirements of paragraph (b) so as to make them mandatory. Finally, one commenter suggested that the requirements should "be specific as to costs citing a dollar amount."

The Committee has reconsidered the issue and has decided not to list "burden" as a separate requirement in paragraph (b). To some extent this is already covered by Executive Order 11821 (39 FR 41501) which requires the evaluation of inflationary impact for all rulemaking documents. Furthermore, if burden (economic or other) is a significant issue, then an agency should discuss it under the general requirements of paragraph (c).

IMPACT STATEMENTS

Two commenters requested that the appropriate impact statements be included in the introductory summary. Two commenters requested clarification of the term "appropriate impact statements." Upon further consideration, the Committee has decided to delete reference to impact statements as a separate requirement. It is anticipated that the responsible agencies will continue to include references to appropriate impact statements (environmental, economic, etc.) in documents where impact is a significant issue for public consideration.

WHY SUCH SIMPLE LANGUAGE?

One Federal agency stated:

> The proposed approach is too broad in that it reduces everything for lay public consumption. For instance, what about technical matters designed for specific group consumption only, such as capitation grants for schools of nursing?

The Committee acknowledges that many problems addressed by Federal agencies are extremely complex and technical and therefore some regulations are necessarily complex and technical.

However, the Committee is of the opinion that the need for, and intended effect of, even the most complex and technical regulation can be explained in words that can be understood by a person who is not an expert in the subject matter. Therefore, the Committee does not agree that the requirement of § 18.12 is too broad.

MUST WE REPLY TO EVERY COMMENT?

One commenter pointed out that:

* * * Our experience has been that proposed regulations which have controversial aspects will generally inspire a flood of comment letters, some of which will contain helpful and constructive suggestions or will make cogent points. Occasionally, however, some of these letters are merely vituperative in nature, or discuss points that are wholly irrelevant to the subject matter of the proposed regulation or are based on a grossly mistaken reading of the substance of a proposed regulation. It is clearly wasteful of time and energy to respond to all such comments in the FEDERAL REGISTER * * *.

The Committee agrees that it is neither useful nor necessary to respond to comments which are merely vituperative. Nor is it necessary to address individually each comment received. For example, in this document the Committee has attempted to address all of the significant comments received, those that resulted in changes in the rule and those that were rejected as well. In some cases several commenters addressed the same issue and these were lumped together as an "issue" discussion. The Committee has also noted those comments which were beyond the scope of the proposed rule. It also noted that where those comments were directed toward improvement of the FEDERAL REGISTER that they would be considered by the Office of the Federal Register in the future.

In response to the comments the Committee has inserted the word "substantive" before "public comments" in paragraph (c).

WHO CAN I CALL TO FIND ABOUT A DOCUMENT?

Several commenters requested that the names of agency contact persons, including phone numbers, be included with the explanatory material.

In his September 27, 1976 Memorandum for the Heads of Executive Departments and Agencies, the President stated:

In recognition of the need for consumers to have direct access to appropriate Federal officials, each department and agency publishing in the FEDERAL REGISTER a rule making, regulation, guideline or other policy matter shall provide in a manner and format determined by the General Services Administration the name, address, and telephone number of the appropriate person responsible for responding to citizens inquiry or comment.

(41 FR 42764, September 28, 1976).

Therefore, the Committee has added a requirement for identification of a contact person.

DELAY OF EFFECTIVE DATE

Several commenters suggested a delayed effective date to facilitate compliance by those agencies likely to be caught with a considerable number of documents already in process. The Committee concurs and is delaying the effective date to accommodate those concerns. However, agencies are strongly urged to begin using the new format as soon as possible. The staff of the Office of the Federal Register will assist agencies to ensure a smooth transition.

HIGHLIGHTS

Highlights will still appear on the cover of the FEDERAL REGISTER, contrary to the impression of several commenters. The new format requirements will provide the necessary information for the Office of the Federal Register staff to write meaningful highlight statements. Thus, the revocation of § 18.16 shifts the responsibility for preparation of the highlight from the issuing agency to the Office of the Federal Register staff. Certain classes of documents of a nonsubstantive nature will continue to be excepted from the highlights.

DISCUSSION OF MISCELLANEOUS COMMENTS

The Committee does not agree that the proposed rule would be improved as suggested by some commenters and has rejected the following suggestions:

(1) That the Office of the Federal Register must concur in an agency determination that further discussion under paragraph (c) is not required. This decision should be made by the issuing agency.

(2) That interpretative rules and procedural rules be exempted from § 18.12. These categories of rules can have as much public significance as legislative rules.

(3) That a summary of internal agency debate "be required in controversial cases." An agency discussion of the important issues in a rulemaking proceeding will normally be adequate to inform the public. Ventilation of internal agency debate is a decision that each agency must and should make for itself.

(4) That a disclaimer clause be included to state that the preamble is merely a reader aid and has no legal effect. Section 5.1(c) of the Committee's regulations states:

In prescribing regulations governing headings, preambles, effective dates, authority citations, and similar matters of form, the Administrative Committee does not intend to affect the validity of any document that is filed and published under law.

The Committee does not believe that a stronger disclaimer statement would be of any value. Rather, normal rules of construction would apply. That is, the courts would follow the language of a regulation as long as it is clear and would look to materials, not included in the regulation, such as the preamble statement, only to clarify ambiguity.

(5) That a "legal authorities statement" be added to the preamble requirements. Such a requirement would merely create a redundancy since it is already required with the regulatory text.

One commenter suggested that all regulations be reprinted, incorporating all intervening changes, at periodic intervals. This is presently being accomplished on an annual basis through the Code of Federal Regulations (CFR). All of the codified regulations are contained within its 50 titles which are updated and published annually. Full sets or individual volumes of the CFR are available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

COMMENTS BEYOND SCOPE

A number of comments were received that were beyond the scope of the notice. They included:

(1) Require minimum comment period of 90 days;

(2) Eliminate emergency regulations;

(3) Impose personal responsibilities upon Government employees for the regulations and programs they propose;

(4) Group all documents in the daily FEDERAL REGISTER by agency;

(5) Request the Office of Management and Budget and the General Accounting Office to prepare for publication in the FEDERAL REGISTER proposed new report forms with instructions and justification statements;

(6) Increase the size of FEDERAL REGISTER print;

(7) Require, where proposed regulations have been substantially changed, agencies to resubmit the revised proposal rules for notice and comment;

(8) Require a standardized format for regulations; and

(9) Footnote legal citations and explain at the bottom of the page.

In addition to being beyond the scope of the proposed rule hereunder consideration, many of the above suggestions are beyond the authority of the Committee. The FEDERAL REGISTER is continually under review for potential improvement and all comments aimed in that direction will be considered by the Office of the Federal Register in its future efforts.

Accordingly, 1 CFR Part 18 is amended as follows:

1. By revising § 18.12 to read as follows:

§ 18.12 Preamble requirements.

(a) Each agency submitting a proposed or final rule document for publication shall prepare a preamble which will inform the reader, who is not an expert in the subject area, of the basis and purpose for the rule or proposal.

(b) The preamble shall be in the following format and contain the following information:

Agency: _____
(Name of issuing agency)

Action: _____
(Notice of Intent), (Advance Notice of Proposed Rulemaking), (Proposed Rule), (Final Rule), (Other).

Summary: _____
(Brief statements, in simple language, of: (i) the action being taken; (ii) the circumstances which created the need for the action; and (iii) the intended effect of the action.)
Dates: _____
(Comments must be received on or before: _____.) (Proposed effective date: _____.) (Effective date: _____.) (Hearing: _____.) Other: _____.)
Addresses: _____
(Any relevant addresses.)
For further information contact: _____
(For Executive departments and agencies, the name and telephone number of a person in the agency to contact for additional information about this document [Presidential Memorandum, 41 FR 42769, September 28, 1976].)
Supplementary information: _____
(As required by the provisions of paragraph (c) of this section.)

(c) When the issuing agency determines that the information provided under paragraph (b) of this section is inadequate as a matter of law, or is insufficient to adequately inform a reader who is not an expert in the subject area, or that a report of additional information is in the public interest, the agency shall include in the preamble the following information, as applicable:

(1) A discussion of the background and major issues involved;

(2) In the case of a final rule, any significant differences between it and the proposed rule;

(3) A response to substantive public comments received; and

(4) Any other information the agency considers appropriate.

§ 18.16 [Reserved]

2. By revoking and reserving § 18.16.

(44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958, Comp. p. 189.)

JAMES B. RHOADS,
Chairman.
THOMAS F. MCCORMICK,
Member.
MARY O. EASTWOOD,
Member.

Approved:

EDWARD H. LEVI,
Attorney General.
JACK ECKERD,
Administrator of General Services.

[FR Doc.76-38173 Filed 12-28-76;8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 392, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period December 17–23, 1976. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 392 (41 FR 54918). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i), (ii), and (iii) of § 907.692 (Navel Orange Regulation 392) (41 FR 54918) are hereby amended to read as follows:

(i) District 1: 788,000 cartons;
(ii) District 2: 55,000 cartons; and
(iii) District 3: 107,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Dated: December 22, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-38142 Filed 12-28-76;8:45 am]

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Expenses and Rate of Assessment

This document authorizes expenses of $27,000 for the Indian River Grapefruit Committee, under Marketing Order 912, for the 1976–77 fiscal period and fixes a rate of assessment of $0.002 per box ($0.001 per four-fifths bushel) of grapefruit handled in such period to be paid to the committee by each handler as his pro rata share of such expenses.

On December 3, 1976, notice of rulemaking was published in the FEDERAL REGISTER (41 FR 53035) inviting written comments not later than December 21, 1976, regarding proposed expenses and the related rate of assessment for the period August 1, 1976, through July 31, 1977, pursuant to the marketing agreement, as amended, and order No. 912, as amended (7 CFR Part 912) regulating the handling of grapefruit grown in the Indian River District in Florida. None were received. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Indian River Grapefruit Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 912.216 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Indian River Grapefruit Committee during the period August 1, 1976, through July 31, 1977, will amount to $27,000.

(b) *Rate of assessment.* The rate of assessment for said period payable by each handler in accordance with § 912.41, is fixed at $0.002 per standard packed box ($0.001 per four-fifths of a United States bushel) of grapefruit, whether in bulk or in any container.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of grapefruit are now being made, (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable grapefruit handled during the aforesaid period, and (3) such period began on August 1, 1976, and said rate of assessment will automatically apply to all such grapefruit beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Dated: December 22, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-38143 Filed 12-28-76;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 442.12]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Grants for Facilitating Development of Private Business Enterprises and Community Water and Waste Disposal Facilities

The introductory text in § 1823.460 of Subpart 0 of Part 1823 of Chapter XVIII, Title 7, Code of Federal Regulations (38 FR 29037, as amended at 39 FR 40579), is amended. The purpose of this amendment is to permit the disbursement of grant funds prior to completion of construction in certain exceptional cases with the prior approval of the National Office. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemptions in 5 U.S.C. 553. This amendment, however, is not being published as proposed rulemaking because it amends existing regulations which preclude grant closing and funds being disbursed prior to project completion, and such delay is detrimental to concerned parties by prohibiting the completion of needed projects and is thus contrary to the public interest.

Interested persons are invited, however, to submit written suggestions on objections regarding this amendment to the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, South Building, Washington, D.C. 20250, on or before January 28, 1977. Material thus submitted will be evaluated and acted upon in the same manner as if the amendment were a proposal. All written submissions pursuant to this notice will be made available for public inspection in the Office of the Chief, Directives Management Branch during regular business hours (8:15 a.m.–4:45 p.m.).

As amended, the introductory text in § 1823.460 reads as follows:

§ 1823.460 Grant closing and delivery of funds.

Closing is the process by which FmHA determines that applicable administrative actions and required work of the grantee have been completed and delivers the grant funds. If all or a portion of the grant is for construction, the grant will not be closed and funds will not be delivered before construction is completed; however, in exceptional cases grants may be closed at an earlier date with prior concurrence of the National Office. In such exceptional cases, State Directors will forward their recommendations for fund disbursal and the following information to the National Office for concurrence before grant closing or commencement of construction, whichever occurs first: The applicant's certification that it has no other resources to pay for completion of the construction; and if interim financing cannot be used due to legal reasons, an opinion from the State Attorney General to that effect, provided by the applicant; or when interim financing is not otherwise available at reasonable rates and terms.

* * * * *

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Effective date. This amendment shall become effective on December 29, 1976.

Dated: December 22, 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.76-38119 Filed 12-28-76;8:45 am]

[FmHA Instruction 442.13]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Development Grants for Community Domestic Water and Waste Disposal Systems

MISCELLANEOUS AMENDMENT

Section 1823.472(e) (2) of Subpart P of Part 1823 of Chapter XVIII, Title 7, Code of Federal Regulations (39 FR 20475) is amended. The purpose of this amendment is to permit the disbursement of grant funds prior to completion of construction in certain exceptional cases, with prior approval of the National Office. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment, notwithstanding the exemption in 5 U.S.C. 553. This amendment, however, is not being published as proposed rulemaking because it amends existing regulations which preclude grant closing and funds being disbursed prior to project completion, and such delay is detrimental to concerned parties by prohibiting the completion of needed projects and is thus contrary to the public interest.

Interested persons are invited, however, to submit written suggestions or objections regarding this amendment to the Chief, Directives Management Branch, Farmers Home Administration, Department of Agriculture, Room 6316, South Building, Washington, D.C. 20250 on or before January 28, 1977. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. All written submissions pursuant to this notice will be made available for public inspection in the office of the Chief, Directives Management Branch, during regular business hours (8:15 a.m.–4:45 p.m.).

As amended, § 1823.472(e) (2) reads as follows:

§ 1823.472 Application processing.

* * * * *

(e) *Grant closing and delivery of funds.* * * *

(2) When FmHA is not making a loan and all or a portion of the grant is for construction, the grant will not be closed and funds will not be delivered before construction is completed; however, in exceptional cases grants may be closed at an earlier date with prior concurrence of the National Office. In such exceptional cases, State Directors will forward their recommendations for fund disbursal and the following information to the National Office for concurrence before grant closing or commencement of construction, whichever occurs first: The applicant's certification that it has no other resources to pay for completion of the construction; and, if interim financing cannot be used due to legal reasons, an opinion from the State Attorney General to that effect provided by the applicant; or when interim financing is not otherwise available, signed statements from other lenders and the applicant showing that such financing is not available at reasonable rates and terms.

* * * * *

(7 U.S.C. 1989 delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.)

Effective date. This amendment shall become effective on December 29, 1976.

Dated: December 22, 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.76-38118 Filed 12-28-76;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS

PART 113—STANDARD REQUIREMENTS

Miscellaneous Amendments

• *Purpose:* To correct the number of samples required for testing. •

Statement of considerations. The number of samples of a product submitted by each licensee for testing by Veterinary Services is prescribed in § 113.3. The number is based on the requirements of tests which may be conducted on each class of product by Veterinary Services personnel.

Subsequent to preparing the current list of samples, some products have been reclassified by definition from a bacterin to a bacterin-toxoid. The number of samples prescribed in § 113.3 for these products was not adjusted accordingly. These changes will provide the necessary number of samples for proper testing.

Pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158) Part 113, Subchapter E, Chapter 1 of Title 9 of the Code of Federal Regulations is amended by making the following administrative changes:

Section 113.3 is amended by revising paragraphs (b) (2) and (b) (5) to read:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(2) *Bacterins and Bacterin-Toxoids:*

(i) Twelve samples of single-fraction bacterins and bacterin-toxoids.

(ii) Thirteen samples of double-fraction bacterins and bacterin-toxoids.

(iii) Fourteen samples of triple-fraction bacterins and bacterin-toxoids.

(iv) Fifteen samples of bacterins and bacterin-toxoids containing more than three fractions.

* * * * *

(5) *Toxoids:* Sixteen single-dose samples or thirteen multiple-dose samples of tetanus toxoid or twelve samples of all other toxoids.

* * * * * *

(21 U.S.C. 151 and 154; 37 FR 28477; 38 FR 19141.)

These amendments provide administrative changes in the biologics control program administered in accordance with the Virus-Serum-Toxin Act. In order to be of maximum benefit, they must be made effective immediately.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure concerning these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective less than 30 days after publication in the FEDERAL REGISTER.

The foregoing amendments shall become effective December 28, 1976.

Done at Washington, D.C., this 23rd day of December, 1976.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

J. M. HEJL,
Deputy Administrator,
Veterinary Services.

[FR Doc.76-38229 Filed 12-28-76;8:45 am]

Title 10—Energy

CHAPTER III—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

REVOCATION OF FORMER AEC REGULATIONS

The Energy Research and Development Administration (ERDA) was established by the Energy Reorganization Act of 1974, Pub. L. 93-438. Pursuant to that Act, as an interim measure, ERDA published a notice, continuing in effect, to the extent not inconsistent with applicable law and with certain clarifications, the regulations of the former Atomic Energy Commission (AEC) contained in 10 CFR Chapter I. The notice also redesignated the regulations as Parts 700 through 870 of a new Chapter III.

The regulations carried over from the AEC included those which pertained to the licensing and regulatory functions of the AEC. These functions were transferred to the Nuclear Regulatory Commission by the Energy Reorganization Act and excepted from the transfer of AEC's functions to ERDA. Pub. L. 93-438, Sec. 201(f). Accordingly, the AEC licensing and related regulations are inapplicable to ERDA and should be revoked.

10 CFR Chapter III is amended by revocation of the parts listed below, effective December 29, 1976.

Dated: December 23, 1976.

ROBERT C. SEAMANS, Jr.,
Administrator.

(Secs. 105, 301, Pub. L. 93-438, 88 Stat. 1238, 1249 (42 U.S.C. 5815, 5871).)

The following parts of 10 CFR Chapter III are hereby revoked:

Part No.	Title	Former AEC No.
715	Interpretations	8
719	Notices, instructions and reports to workers; inspections	19
720	Standards for protection against radiation	20
730	Rules of general applicability to licensing of byproduct material	30
731	General licenses for byproduct material	31
732	Specific licenses to manufacture, distribute, or import certain items containing byproduct material	32
733	Specific licenses of broad scope for byproduct material	33
734	Licenses for radiography and radiation safety requirements for radiographic operations	34
736	Export and import of byproduct material	36
740	Licensing of source material	40
750	Licensing of production and utilization facilities	50
751	Licensing and regulatory policy and procedures for environmental protection	51
755	Operators' licenses	55
770	Special nuclear material	70
771	Packaging of radio-active material for transport and transportation of radio-active material under certain conditions	71
800	Reactor site criteria	100
815	Procedures for review of certain nuclear reactors exempted from licensing requirements	115
850	Exemptions and continued regulatory authority in agreement states under sec. 274	150
870	Fees for facilities and materials licenses under the Atomic Energy Act of 1954, as amended	170

[FR Doc.76-38160 Filed 12-28-76;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. D; Docket No. R-0069]

PART 204—RESERVES OF MEMBER BANKS

Reserve Percentages

The Board of Governors has amended Regulation D (12 CFR 204) to modify the provisions as to the reserve balances that member banks are required to maintain on demand deposits. The amendments will reduce reserve requirements of member banks by one-half percentage point on demand deposits up to $10 million and by one-quarter percentage point on demand deposits above that amount.

The amendments approved by the Board today represent a structural adjustment in reserve requirements on demand deposits that will tend to increase the supply of bank credit. The effect of these amendments will be to reduce required reserves of member banks by approximately $550 million.

This action was taken pursuant to the Board's authority under section 19 of the Federal Reserve Act (12 U.S.C. 461) to set reserve ratios for member banks. The amendments to Regulation D are effective with respect to reserves required to be held by member banks during the week beginning December 30, 1976, against deposits outstanding in the week beginning December 16, 1976.

The Board determined it to be in the public interest to provide a basis for an increase in the supply of bank credit without the delay and uncertainty that might result if a change in reserve requirements were announced in proposed form. In light of these factors, therefore, the Board determined that good cause exists for dispensing with notice and public participation with respect to these amendments and for promulgating these amendments without deferring the effective date thereof for the 30 day period referred to in section 553(d) of Title 5 of the United States Code, and that it would be impracticable, unnecessary and contrary to the public interest to provide notice and public participation or to defer the effective date. See also § 262.2(e) of the Board's Rules of Procedure.

Effective as to the reserves required to be held during the week commencing December 30, 1976, against deposits outstanding in the week beginning December 16, 1976, § 204.5(a) (1) (iii) and (2) (iii) of Regulation D are amended to read as follows:

§ 204.5 Reserve requirements.

(a) * * *

(1) * * *

(iii) (a) 7 percent of its net demand deposits if its aggregate net demand deposits are $2 million or less, (b) $140,000 plus 9½ percent of its net demand deposits in excess of $2 million but less than $10 million, (c) $900,000 plus 11¾ percent of its net demand deposits in excess of $10 million if its aggregate net demand deposits are in excess of $10 million but less than $100 million, or (d) $11,475,000 plus 12¾ percent of its net demand deposits in excess of $100 million.

(2) * * *

(iii) $49,725,000 plus 16¼ percent of its net demand deposits in excess of $400 million.

* * * * *

Board of Governors of the Federal Reserve System, December 17, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-38116 Filed 12-28-76;8:45 am]

[Reg. ZFC-0030]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

In accordance with 12 CFR Part 226.1 (d), the Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR Part 261.6.

Official staff interpretations may be reconsidered by the Board upon request of interested parties and in accordance with 12 CFR Part 226.1(d) (2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

This interpretation shall be effective as of December 27, 1976.

[FC-0030]

§ 226.8(b) (3) Mortgage insurance premiums should be included in computation of each payment. Can disclose duplicate payments as "12 monthly payments of $x" rather than listing each duplicate payment separately. Supplements FC-0003. See also FC-0025.

DECEMBER 15, 1976.

This is in response to your letter of ———, in which you raised a question concerning the disclosure of mortgage guarantee insurance premiums under § 226.8(b) (3) of Regulation Z.

Your letter indicates that you are aware of the position expressed in Official Staff Interpretation FC-0003 that the amount of required mortgage insurance premiums should be taken into consideration in computing the amount of each payment scheduled to repay the indebtedness for disclosure under § 226.8(b) (3). You have asked how the mortgage insurance premium should be reflected on the Truth in Lending disclosure statement.

Staff suggests two methods of disclosure of the mortgage insurance premium which will satisfy § 226.8(b) (3). The creditor may simply list the actual amount of each required payment over the life of the loan. If this method is chosen, the mortgage insurance premium should be included in the computation of each payment to be made during the period for which mortgage insurance is required. It is staff's understanding that in most cases, although the mortgage insurance premium varies from year to year, the yearly premium is allocated equally to each monthly payment during that year, resulting in twelve equal monthly payments. In such cases, there is no need to list the amount of each payment twelve times; a disclosure such as "twelve monthly payments of $x" would be sufficient.

An alternative method of disclosure would be to disclose the amount of payments using the format outlined in Interpretation § 226.808. Official Staff Interpretation FC-0003 authorizes the use of the disclosure format outlined in Interpretation § 226.808 for this purpose despite the fact that each payment does not consist of an equal amount being applied to principal. Official Staff Interpretation FC-0025 (copy enclosed) outlines how a disclosure of this type could be made.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d) (3) and is confined to the facts as stated. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

[FC-0031]

§ 226.8(b) (3) Identical to FC-0030, issued December 15, 1976.

DECEMBER 17, 1976.

This is in response to your letter of ———, in which you raised a question concerning the disclosure of mortgage guarantee insurance premiums under § 226.8(b) (3) of Regulation Z.

Your letter indicates that you are aware of the position expressed in Official Staff Interpretation FC-0003 that the amount of required mortgage insurance premiums should be taken into consideration in computing the amount of each payment scheduled to repay the indebtedness for disclosure under § 226.8(b) (3). You have asked how the mortgage insurance premium should be reflected on the Truth in Lending disclosure statement.

Staff suggests two methods of disclosure of the mortgage insurance premium which will satisfy § 226.8(b) (3). The creditor may simply list the actual amount of each required payment over the life of the loan. If this method is chosen, the mortgage insurance premium should be included in the computation of each payment to be made during the period for which mortgage insurance is required. It is staff's understanding that in most cases, although the mortgage insurance premium varies from year to year, the yearly premium is allocated equally to each monthly payment during that year, resulting in twelve equal monthly payments. In such cases, there is no need to list the amount of each payment twelve times; a disclosure such as "twelve monthly payments of $x." would be sufficient.

An alternative method of disclosure would be to disclose the amount of payments using the format outlined in Interpretation § 226.808. Official Staff Interpretation FC-0003 authorizes the use of the disclosure format outlined in Interpretation § 226.808 for this purpose despite the fact that each payment does not consist of an equal amount being applied to principal. Official Staff Interpretation FC-0025 (copy enclosed) outlines how a disclosure of this type could be made.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d) (3) and is confined to the facts as stated. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

[FC-0032]

§226.8(c) Payment to dentist from patient's insurance company should be treated as downpayment if amount is known or can be estimated.

DECEMBER 20, 1976.

This is in response to your letter of ———, requesting an official staff interpretation concerning proper credit sale disclosures under § 226.8 of Regulation Z.

You indicate that your dentist clients, engaging in other than open end credit transactions, frequently receive payment from a patient's insurance company. This payment may be made prior to, during, or after dental treatment, and the timing is solely under the control of the insurance company. The insurance company generally provides, either directly or through the patient, an estimate of the amount of the fee which will be paid by the company. The dentist does not charge interest on the portion of the fee paid by the insurance company. However, the patient is liable to pay that amount if the company for any reason fails to pay. Your question is how this payment should be reflected on the disclosure statement for the credit sale.

Although the insurance payment is not always received prior to the time disclosures are made, it is staff's opinion that the best method of disclosure would be to show that payment as a downpayment, pursuant to § 226.8(c) (2). Two reasons support treating the payment in this manner. First, it reflects the reality of the transaction, since it is the cash price less these insurance payments that typically represents the true amount financed, i.e., the amount on which finance charges (here interest) are computed. Secondly, disclosures under Truth in Lending are to be based on the intentions of and the facts as known by the parties at consummation; here both parties rely on the insurance payments and structure their relationship accordingly.

If the insurance company payment has already been received at the time disclosures are made, the downpayment should be shown in the exact amount received. Where the payment has not yet been received but an estimate has been made by the insurance company, that estimated figure should be disclosed as the downpayment in accordance with § 226.6(f).

If, at the time of the disclosures, neither the payment nor an estimate has been received from the insurance company, in staff's opinion it would be proper to show the full fee as the cash price and therefore included in the amount financed. In other words, the initial transaction could be set up as if the insurance payment would not be made. If the insurance company later did make a payment, this would be treated as a subsequent occurrence. Since this unanticipated payment would ultimately result in a prepayment of the loan under the original terms of the contract, disclosures under § 226.8(b) (6) or § 226.8(b) (7) may be applicable.

This letter is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d) (3) of the Regulation. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

Board of Governors of the Federal Reserve System, December 22, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-38115 Filed 12-28-76;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77-12]

UNCLAIMED AND ABANDONED MERCHANDISE

General Order

Section 141.5 of the Customs Regulations (19 CFR 141.5) provides that merchandise for which timely entry is not made shall be treated in accordance with Part 20 of the Customs Regulations (19

CFR Part 20). Section 158.44(b) provides for the sale of abandoned merchandise in accordance with the provisions of Part 20. Section 162.46(c)(1) provides for the sale of forfeited property in accordance with the provisions of Part 20.

Part 20 of the Customs Regulations, relating to the disposition of unclaimed and abandoned property merchandise, has been deleted and its provisions revised and republished as Part 127. Therefore, it is necessary to amend §§ 141.5, 158.44(b), and 162.46(c)(1) in order that they properly refer to Part 127.

Accordingly, §§ 141.5, 158.44(b), and 162.46(c)(1) of the Customs Regulations (19 CFR 141.5, 158.44(b), 162.46(c)(1)) are amended as follows:

PART 141—ENTRY OF MERCHANDISE

§ 141.5 [Amended]

The second sentencee of § 141.5 is amended by substituting "Part 127" for "Part 20."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

§ 158.44 [Amended]

The first sentence of § 158.44(b) is amended by substituting "Part 127" for "Part 20."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 162—INSPECTION, SEARCH, AND SEIZURE

§ 162.46 [Amended]

The first sentence of § 162.46(c)(1) is amended by substituting "Part 127" for "Part 20."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

Inasmuch as the foregoing amendments merely correct obsolete references contained in the Customs Regulations and require no public initiative, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

Effective date. These amendments shall become effective on December 29, 1976.

Approved: December 20, 1976.

VERNON D. ACREE,
Commissioner of Customs.
JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.76-38141 Filed 12-28-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7449]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Election to Have Investment Credit for Movie and Television Films Determined in Accordance With Previous Litigation

This document contains temporary income tax regulations (26 CFR Part 7), relating to the election to have the investment credit for movie and television films determined in accordance with previous litigation under section 804(c)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1595).

Under section 804(c)(3) of the Tax Reform Act of 1976, any taxpayer who filed an action in any court of competent jurisdiction before January 1, 1976, for a determination of such taxpayer's rights to investment credit under section 38 of the Internal Revenue Code of 1954 with respect to any film placed in service in any taxable year beginning before January 1, 1975, may elect to have investment credit on all films placed in service in taxable years beginning before January 1, 1975 (except those subject to an election under section 804(e)(2) of the Act) determined as through section 804 of the Act (execpt section 804(c)(3) of the Act) had not been enacted.

Section 804(c)(3)(D) of the Act provides that the election shall be made by filing a notification of such election with the National Office of the Internal Revenue Service. In order to provide taxpayers who may wish to make this election assurance that they do so properly, paragraph (b) of § 7.48-1 of the regulations contained in this Treasury decision provide a permissible, but not mandatory, means of making the election.

ADOPTION OF REGULATIONS

In order to prescribe temporary income tax regulations under the Tax Reform Act of 1976 (26 CFR Part 7) relating to the means of making the election to have the investment credit for movie and television films determined in accordance with previous litigation under section 804(c)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1595), the following temporary regulations are hereby adopted and added to Part 7, established at 41 FR 55344, December 20, 1976.

§ 7.48-1 Election to have investment credit for movie and television films determined in accordance with previous litigation.

(a) *Generally.* Under section 804(c)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1595), any taxpayer who filed an action in any court of competent jurisdiction before January 1, 1976, for a determination of such taxpayer's rights to investment credit under section 38 of the Internal Revenue Code of 1954 with respect to any film placed in service in any taxable year beginning before January 1, 1975, may elect to have investment credit on all films placed in service in taxable years beginning before January 1, 1975 (except those subject to an election under section 804(e)(2) of the Act), determined as though section 804 of the Act (except section 804(c)(3) of the Act) had not been enacted.

(b) *Manner of making the election.* The election allowed by section 804(c)(3) of the Act may be made by a notification in the form of a letter signed by the taxpayer or an authorized representative of the taxpayer stating:

(1) The taxpayer's name, address, and identification number;

(2) The taxable years in which the films were placed in service with respect to which the election shall apply; and

(3) The court in which the litigation was commenced and information adequate to identify the particular litigation, for example, the names of the litigants, the date the suit was commenced, and the court case or docket number of the litigation.

The letter should be sent to the Deputy Commissioner of Internal Revenue, Attention: CC:RL:Br2, Room 4617, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

(c) *Time for making the election.* The election under section 804(c)(3) of the Act must be made not later than January 3, 1977. If mailed, the cover containing the notification of such election must be postmarked not later than January 3, 1977.

(d) *Revocation of election.* An election under section 804(c)(3) of the Act, once made, shall be irrevocable.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805)).

Approved: December 22, 1976.

WILLIAM E. WILLIAMS,
Deputy Commissioner of Internal Revenue.

WILLIAM M. GOLDSTEIN,
Acting Assistant Secretary of the Treasury.

[FR Doc.76-38099 Filed 12-22-76;4:48 pm]

[T.D. 7450]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Questions and Answers Relating to Exclusion of Certain Disability Income Payments

This document contains questions and answers relating to the exclusion of certain disability income payments received in taxable years beginning after December 31, 1975, from an employer-establish plan.

Under prior law, an employee could exclude from income up to $100 a week received under wage continuation plans when such employee was absent from work on account of injury or sickness. The Tax Reform Act of 1976 eliminates the so-called sick pay exclusion for temporary absences from work and continues the exclusion of up to $5,200 a year generally for retirees under age 65 only if the disability retiree is permanently and totally disabled. In addition the Act reduces this $5,200 exclusion dollar-for-dollar for adjusted gross income (including disability income) in excess of $15,000.

These questions and answers are intended to provide guidelines which may be relied upon by taxpayers in order to resolve the issues specifically considered. However, no inferences should be drawn regarding issues not raised which may be suggested by a particular question and answer or as to why certain questions, and not others, are included. Furthermore, in applying the questions and answers, the effect of subsequent legislation, regulations, court decisions, and interpretative bulletins must be considered.

ADOPTION OF AMENDMENTS OF THE REGULATIONS

In order to provide Temporary Income Tax Regulations (26 CFR Part 7) under section 105(d) of the Internal Revenue Code of 1954, as amended by section 505 (a) and (c) of the Tax Reform Act of 1976 (90 Stat. 1566), the following new section is added.

§ 7.105–1 Questions and answers relating to exclusions of certain disability income payments.

Q–1: What effect on the sick pay exclusion does the new law have?

A–1: The "sick pay" provisions of prior law (which allowed a limited exclusion from gross income of sick pay received before mandatory retirement age by active employees temporarily absent from work because of sickness or injury, as well as by disability retirees) have been replaced by provisions of the new law (which provide for a limited exclusion of disability payments but restrict its application to individuals retired on disability who meet certain requirements as to permanent and total disability, age, etc.) (Q–4). As a result of the more restrictive provisions of the new law, many taxpayers who qualified for the exclusion in previous taxable years will not be eligible to claim the disability payments exclusion beginning with the effective date of the new law.

Q–2: What is the effective date of the new law relating to disability exclusion?

A–2: The disability payments exclusion and the related annuity provisions of the Tax Reform Act of 1976 are effective for taxable years beginning after December 31, 1975. Thus, a payment received in 1976 by a retiree who uses the cash receipts and disbursements method of accounting and files returns on a calendar year basis is governed by the new law. This is true even though the payment may be applicable to 1975. For example, a payment for December 1975 that is received in January 1976 by a calendar-year, cash-basis taxpayer is controlled by the new law.

Q–3: What are disability payments?

A–3: In general, disability payments are amounts constituting wages or payments in lieu of wages made under provisions of a plan providing for the payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability. Amounts paid to such an employee after mandatory retirement age is attained are not wages or payments in lieu of wages for purposes of the disability income exclusion.

Q–4: Who is eligible to exclude disability payments?

A–4: A taxpayer who receives disability payments in lieu of wages under a plan providing for the payment of such amounts may qualify for the exclusion provided all of the following requirements are met:

(1) The taxpayer has not reached age 65 (see Q–9) before the end of the taxable year;

(2) The taxpayer has not reached mandatory retirement age (see Q–8) before the beginning of the taxable year;

(3) The taxpayer retired on disability (see Q–10) (or if retired prior to January 1, 1976 and did not retire on disability, would have been eligible to retire on disability at the time of such retirement);

(4) The taxpayer was permanently and totally disabled (see Q–11) when the taxpayer retired (or if the taxpayer retired before January 1, 1976, was permanently and totally disabled on January 1, 1976); and

(5) The taxpayer has not made an irrevocable election not to claim the disability income exclusion (see Q–17 through Q–19).

Q–5: What limitations are placed on the amounts excludable?

A–5: The amount of disability income that is excludable:

(a) Cannot exceed the amount of the disability income payments received for any pay period;

(b) Cannot exceed a maximum weekly rate of $100 per taxpayer. Thus, the maximum disability income exclusion allowable on a joint return (see Q–7) in the usual case where one spouse receives disability payments, generally, would be $5,200, and if both spouses received disability payments the maximum exclusion, generally, would be $10,400 ($5,200 for each spouse);

(c) Cannot exceed, in the case of a disability income payment for a period of less than a week, a prorated portion of the amount otherwise excludable for that week (see Q–6); and

(d) Cannot exceed, for the entire taxable year, the total amount otherwise excludable for such taxable year reduced, dollar for dollar, by the amount by which the taxpayer's adjusted gross income (determined without regard to the disability income exclusion) exceeds $15,000. Where a disability income exclusion is claimed by either or both spouses on a joint return, the taxpayer's adjusted gross income means the total adjusted gross income of both spouses combined (determined without regard to the disability income exclusion) (see also Q–7).

Q–6: On what occasion is a taxpayer likely to receive part-week disability payments? How do you prorate such payments?

A–6: Such part-week payments may be received when one of the following events occurs after the first day of the taxpayer's normal workweek: (a) the disability retirement commences; (b) the taxpayer reaches mandatory retirement age in a taxable year prior to the taxable year in which such taxpayer attains age 65; or (c) the taxpayer dies. To prorate a part-week disability income payment for purposes of the exclusion, the taxpayer must:

(1) Determine the "daily exclusion," which is the lesser of—

(a) The taxpayer's daily rate of disability pay, or

(b) $100 divided by the number of days in the taxpayer's normal workweek.

(2) Multiply the daily exclusion by the number of days for which the part-week payment was made.

Thus, for a taxpayer whose normal workweek was Monday through Friday and whose retirement on permanent and total disability began on Wednesday, the first disability income payment would include a payment for a part-week consisting of three days. Assuming that the daily exclusion determined in (1), above, is $20, the taxpayer's exclusion for the first week would be $60 ($20 × 3).

Q–7: What filing restrictions apply to a married taxpayer who claims a disability income exclusion?

A–7: A taxpayer married at the close of the taxable year who lived with his or her spouse at any time during such taxable year must file a joint return in order to claim the disability income exclusion. However, a taxpayer married at the close of the taxable year who lived apart from his or her spouse for the entire taxable year may claim the exclusion on either a joint or separate return.

Q–8: What is "mandatory retirement age"?

A–8: Generally, mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program, had the taxpayer not become disabled.

Q–9: Does a taxpayer reach age 65 on the day before his or her 65th birthday for purposes of the disability income exclusion, as is the case for purposes of the exemption for age and the credit for the elderly?

A–9: No. For purposes of the disability income exclusion, a taxpayer reaches age 65 on the day of his or her 65th birthday anniversary. Thus, a taxpayer whose 65th birthday occurs on January 1, 1977, is not considered to reach age 65 during 1976, for purposes of the disability income exclusion.

Q–10: What does "retired on disability" mean?

A–10: Generally, it means that an employee has ceased active employment in all respects because of a disability and has retired under a disability provision of a plan for employees. However, an employee who has actually ceased active employment in all respects because of a disability may be treated as "retired on disability" even though the employee has not yet gone through formal "retirement" procedures, as for example, where an employer carries the disabled employee in a non-retired status under the disability provisions of the plan solely for the purpose of continuing such employee's eligibility for certain employer-provided fringe benefits. In addition, such an employee may be treated as "retired on disability" even though the initial period immediately following his or her ceasing of employment on account of a disability must first be used against accumulated "sick leave" or "annual leave" prior to the employee being formally placed in disability retirement status.

Q–11: What is permanent and total disability?

A–11: It is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that:

(a) Can be expected to result in death;

(b) Has lasted for a continuous period of not less than 12 months; or

(c) Can be expected to last for a continuous period of not less than 12 months. The substantial gainful activity referred to is not limited to the activity, or a comparable activity, in which the individual customarily engaged prior to such individual's retirement on disability.

Q–12: *If a taxpayer retired on disability but it is not clear until the following taxable year that the disability as of the date of such retirement was permanent and total (so that the employee did not exclude any amount as disability income in the earlier taxable year), may the taxpayer file an amended return to claim the disability income exclusion for the taxable year in which such taxpayer retired on disability which was permanent and total?*

A–12: Yes.

Q–13: *What proof must a taxpayer furnish to establish the existence of permanent and total disability?*

A–13: If retired on disability before January 1, 1976: A certificate from a qualified physician attesting to the taxpayer's permanent and total disability on January 1, 1976.

If retired on disability during 1976 or thereafter: A certificate from a qualified physician attesting to the taxpayer's permanent and total disability at the time such taxpayer retired on disability.

In either case, the taxpayer must attach such certification to the taxpayer's income tax return. The certification by the physician shall give the physician's name and address and shall also contain an acknowledgment that the physician understands the certification will be used by the taxpayer to claim the exclusion for permanent and total disability on his or her income tax return. No certification from any employer is required with regard to the determination of permanent and total disability.

Q–14: *For what period does a taxpayer eligible (see Q–4) for the disability income exclusion (without regard to the $15,000 income phaseout explained in Q–5) continue to be eligible for such exclusion?*

A–14: Unless the taxpayer earlier makes the irrevocable election not to claim the disability income exclusion described in Q–17 through Q–19, such taxpayer continues to be eligible until the earlier of:

(a) The beginning of the taxable year in which the taxpayer reaches age 65; and

(b) The day on which the taxpayer reaches mandatory retirement age.

Q–15: *May a taxpayer while eligible (see Q–4) for the disability income exclusion under the new law, exclude any applicable pension or annuity costs?*

A–15: No. This is true even though while eligible for the disability income exclusion, such taxpayer is unable to exclude any amount of the disability income payments because of the $15,000 income phaseout (see Q–5).

Q–16: *When will a taxpayer who is eligible (see Q–4) to exclude disability income payments (without regard to the $15,000 phaseout explained in Q–5) under the new law be able to exclude any applicable pension or annuity costs?*

A–16: In general, such a taxpayer will begin to exclude any of his or her pension or annuity costs under applicable rules of the Code beginning on the first day of the taxable year in which he or she attains age 65 or, if mandatory retirement age is attained in an earlier taxable year, beginning on the day the taxpayer attains mandatory retirement age.

Q–17: *May a taxpayer who is eligible (see Q–4) to exclude disability income payments (without regard to the $15,000 phaseout explained in Q–5) under the new law begin to exclude applicable pension or annuity costs in an earlier taxable year?*

A–17: Yes, but such a taxpayer must make the election described in Q–18 and Q–19 in which case the taxpayer would no longer be eligible for the disability income exclusion.

Q–18: *What is an election not to claim the disability income exclusion?*

A–18: It is an irrevocable election for the taxable year for which the election is made, and each taxable year thereafter. If such an election is made the taxpayer will begin to recover tax-free, out of the payments, his or her annuity costs as provided under the applicable provision of the Code.

Q–19: *How does a taxpayer who is eligible to exclude disability income payments (without regard to the $15,000 phaseout explained in Q–5) under the new law make this election?*

A–19: The election is made by means of a statement attached to the taxpayer's income tax return (or amended return) for the taxable year in which the taxpayer wishes to have the applicable annuity rule apply. The statement shall set forth the taxpayer's qualifications to make the election (i.e., that the taxpayer is eligible (see Q–4) to exclude disability income payments (without regard to the $15,000 income phaseout explained in Q–5)) and that such taxpayer irrevocably elects not to claim the benefit of excluding disability income payments under section 105(d), as amended, for such taxable year and each taxable year thereafter. The election cannot be made for any taxable year beginning before January 1, 1976.

Q–20: *What relief is provided for taxpayers who underpaid their estimated taxes for the installments due prior to enactment of the Tax Reform Act of 1976?*

A–20: The IRS does not, under present law, have any authority to abate estimated tax underpayment penalties that are attributable to retroactive changes in the tax law. However, when Congress reconvenes it is anticipated that legislation may be approved to relieve taxpayers of such penalties due to the Tax Reform Act to the extent that they are attributable to retroactive changes in the law. Therefore, the Service will defer assessment of penalties for the underpayment of estimated tax until April 15, 1977, in order that Congress will have an opportunity to consider legislative action in this area. In the meantime, current estimated tax installments should reflect changes made in the law. To avoid additional penalties which will arise should remedial legislation not be enacted, taxpayers should pay previously underpaid estimated tax as soon as possible.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitations of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 21, 1976.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.76–38098 Filed 12–22–76;4:44 pm]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7451]

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Temporary Regulations Relating to Certain Requirements for Income Tax Return Preparers

This document contains temporary regulations on procedure and administration (26 CFR Part 404) under sections 6060, 6107, 6109(a)(4), and 6695(b) of the Internal Revenue Code of 1954 as added or amended by section 1203 of the Tax Reform Act of 1976 (Pub. L. 95–455, 90 Stat. 1688) in order to provide for certain requirements for income tax return preparers with respect to the preparation of returns of tax under subtitle A of the Code and claims for refund of tax under subtitle A of the Code.

The temporary regulations provide for the filing of an annual information return by certain income tax return preparers with respect to income tax return preparers employed by them. The temporary regulations also provide for the signature of an income tax return preparer on the return or on the claim for refund of income tax; for the furnishing of a copy of the return or claim for refund to the taxpayer for whom such return or claim was prepared; and for retention of a copy of the return or claim for refund prepared, or retention on a list, of the name, the identification number, and taxable year of the taxpayer for whom such return or claim for refund was prepared and the type of return or claim for refund prepared. In addition, certain income tax return preparers are required by such temporary regulations to furnish on the return or claim for refund their identifying number and the address of the place of business where such return or claim for refund was prepared.

Income tax return preparers shall comply with the requirements of these provisions for returns or claims for refund prepared after December 31, 1976.

ADOPTION OF AMENDMENT TO THE REGULATIONS

A new part 404, Temporary Regulations on Procedure and Administration Under the Tax Reform Act of 1976, is hereby added to Title 26 of the Code of Federal Regulations. In order to prescribe temporary regulations on procedure and administration relating to certain requirements for income tax return preparers under sections 6060, 6107, 6109(a)(4), and 6695(b) of the Internal Revenue Code of 1954, as added or amended by section 1203 of the Tax Reform Act of 1976 (Pub. L. 95–455, 90 Stat. 1688), the following temporary regulations are hereby adopted:

Sec.

AUTHORITY. Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

§ 404.6060–1 Information returns of income tax return preparers.

(a) *In general.* (1) Any person who employs one or more income tax return preparers to prepare any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 other than for such person, at any time during a return period shall make an information return setting forth the name, taxpayer identification number, and place of work of each income tax return preparer employed by him at any time during such period.

(2) For the definition of the term "income tax return preparer", see section 7701(a)(36). For the definition of the term "return period", see section 6060(c) and paragraph (c) of this section.

(3) For purposes of this section, any individual who, in acting as an income tax return preparer, is not the employee of another income tax return preparer shall be treated as his own employer. Thus, for example, a sole proprietor without any employee-preparers shall make the information return required under this section. However, a partnership shall, for the purpose of this section, be treated as the employer of the partners of such partnership. Thus, the partnership shall make the information return on which shall be listed the partners and employees who were income tax return preparers on behalf of the partnership during the return period.

(4) Form 5717 is the form prescribed for use in making the information return required under this section. The information return made under this section shall be filed on or before the first July 31 following the end of the return period to which such return relates with the Internal Revenue Service Center.

(b) *Alternative reporting method.* (1) A person required to make an information return under paragraph (a) of this section may request approval of an alternative reporting method which such person wishes to use to comply with the requirements of paragraph (a) of this section. Such an alternative reporting method requested may include, for example, the filing, on a consistent basis, of the information required by paragraph (a) of this section on magnetic tape. However, no approval will be given to an alternative reporting method that does not require some form of annual filing of all the information required.

(2) Any such request for approval of an alternative reporting method shall be in writing, directed to, and filed at least 90 days prior to the date such return is otherwise due with the Office of Assistant Commissioner (Accounts, Collection and Taxpayer Service), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. If such request is denied (or not approved) by the date when the return is otherwise due, the return shall be immediately filed. If such request is approved, the approval shall continue in effect with respect to all return periods until modified or revoked by written notice to the person otherwise required to make the return.

(c) *Return period defined.* For purposes of this section, the term "return period" means the 12-month period beginning on July 1 of each year, except that the first return period shall be the 6-month period beginning on January 1, 1977, and ending on June 30, 1977.

(d) *Penalty.* For the civil penalty for failure to file an information return required under this section or for failure to set forth an item in such return as required under this section, see section 6695(e).

§ 404.6107–1 Income tax return preparer must furnish copy of return to taxpayer and must retain a copy or list.

(a) *Furnishing copy to taxpayer.* Any person who is an income tax return preparer with respect to any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 shall furnish a completed copy of such return or claim for refund to the taxpayer not later than the time such return or claim for refund is presented for such taxpayer's signature.

(b) *Copy or list to be retained.* Any person who is an income tax return preparer with respect to a return or claim for refund shall, for the 3 year period following the close of the return period during which such return or claim for refund was filed—

(1) (i) Retain a completed copy of such return or claim for refund, or

(ii) Retain, on a list, the name, taxpayer identification number, and taxable year of the taxpayer for whom such return or claim for refund was prepared and the type of return or claim for refund prepared; and

(2) Make such copy or list available for inspection upon request by the district director.

For the definition of the "return period", see section 6060(c) and § 404.6060.1(c).

(c) *Preparer.* For the definition of the term "income tax return preparer", see section 7701(a)(36). For purposes of applying this section, in the case of—

(1) An employment arrangement between two or more income tax return preparers, the person who employs one or more other preparers to prepare for compensation any return or claim for refund other than for such person (and not the other preparers) shall be considered to be the income tax return preparer; and

(2) A partnership arrangement for the preparation of returns and claims, the partnership (and not the partner) shall be considered to be the income tax return preparer.

(d) *Penalties.* (1) For the civil penalty for failure to furnish a copy of the return or claim for refund to the taxpayer as required of the preparer under paragraph (a) of this section, see section 6695(a).

(2) For the civil penalty for failure to retain a copy of the return or claim for refund, or to retain a list, as required of the preparer under paragraph (b) of this section, see section 6695(d).

§ 404.6109–1 Furnishing identifying number of income tax return preparer.

(a) *Furnishing identifying number.* Any return or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 prepared by an income tax return preparer shall bear the identifying number of such preparer. For purposes of this section, where there is an employment arrangement between two or more preparers, the person who employs one or more other persons to prepare for compensation the return or claim for refund (and not the other preparers) shall be considered to be the preparer. Where the preparer is—

(1) An individual (not described in subparagraph (2) of this paragraph (a)), such preparer's social security account number shall be affixed by such preparer; and

(2) A person (whether an individual, corporation or partnership) who employs one or more persons to prepare the return or claim for refund, such preparer's employer identification number shall be affixed by such preparer.

For the definition of the term "income tax return preparer" (or "preparer"), see section 7701(a)(36).

(b) *Furnishing address.* Any return or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 which is prepared by an income tax return preparer shall bear the street address, city, state, and postal zip code of the preparer's place of business where the return or claim for refund was prepared. For purposes of the preceding sentence, if prior written permission has been granted by the Internal Revenue Service, the postal zip code of such place of business will be considered a satisfactory address. However, if the place of business where the return or claim for refund was prepared is not maintained by the preparer as a place of business on a year-round basis, the return or claim for refund shall bear the street address, city, state, and postal zip code of the preparer's principal office or business location which is maintained on a year-round basis, or if none, the preparer's residence.

(c) *Penalty.* For the civil penalty for failure to furnish an identifying number as required under paragraph (a) of this section, see section 6695(c).

§ 404.6695–1 Failure to sign return.

(a) *Signature of income tax return preparer.* Any individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code of 1954 or

claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 shall sign the return or claim for refund in the appropriate space provided on such return or claim for refund. If the preparer is unavailable for signature, another preparer must so advise the taxpayer, must review the entire preparation of the return or claim, and then must sign the return or claim. The signature of the preparer should be affixed after the return or claim is completed and is ready to be submitted to the taxpayer for signature. For the definition of the term "income tax return preparer" (or preparer), see section 7701(a)(36). If more than one income tax return preparer is involved in the preparation of the return or claim for refund, the individual preparer who has the primary responsibility as between or among the preparers for the overall accuracy of the preparation of such return or claim for refund shall be deemed to be the income tax return preparer for purposes of this section.

(b) *Examples* The application of paragraph (a) of this section is illustrated by the following examples:

Example (1). X law firm employs Y, a lawyer, to prepare for compensation returns and claims for refund of taxes. X is employed by T, a taxpayer, to prepare his 1976 Federal tax return. X assigns Y to prepare T's return Y obtains the information necessary for completing the return from T and makes determinations with respect to the proper application of the tax laws to such information in order to determine T's tax liability. Y then forwards such information to C, a computer tax service which performs the mathematical computations and prints the return form by means of computers. C then sends the completed return to Y who reviews the accuracy of the return. Y is the individual preparer who is primarily responsible for the overall accuracy of T's return. Y must sign the return as preparer.

Example (2). X partnership is a national accounting firm which prepares for compensation returns and claims for refund of taxes. A and B, employees of X, are involved in preparing the 1976 tax return of T Corporation. After they complete the return, including the gathering of the necessary information, the application of the tax law to such information, and the performance of the necessary mathematical computations, P, a partner of X reviews the return. As part of this review, P checks for mathematical mistakes, reviews the information provided, and makes the final determination with respect to the proper application of the tax law to the information in order to determine T's tax liability. P is the individual preparer who is primarily responsible for the overall accuracy of T's return. P must sign the return as preparer.

Example (3). C corporation maintains an office in Seattle, Washington for the purpose of preparing for compensation returns and claims for refund of taxes. C makes compensatory arrangements with individuals (but provides no working facilities) in several states to collect information from taxpayers and to make determinations with respect to the proper application of the tax law to such information in order to determine the tax liabilities of such taxpayers. E, an individual who has such an arrangement in Los Angeles with C, collects such information from T, a taxpayer, and completes a work sheet kit supplied by C which is stamped with E's name and an identification number assigned by C. In this process, E classifies this information in appropriate income and deduction categories for the tax determination. The completed work sheet kit signed by E is then mailed to C. D, an employee in C's office, reviews the work sheet kit for accuracy. D neither reviews the information for the validity or accuracy of the underlying information provided nor makes the final determinations with respect to the proper application of the tax law to such information. The data from the work sheet kit is entered into a computer and the return form is completed. The return is prepared for submission to T with filing instructions. E is the individual preparer primarily responsible for the overall accuracy of T's return. E must sign the return as preparer before filing.

(c) *Penalty.* Any individual required by paragraph (a) of this section to sign a return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 who fails to comply with such requirement shall be subject to a penalty of $25 for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury Decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

Approved: December 23, 1976.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

WILLIAM M. GOLDSTEIN,
Assistant Secretary of the Treasury.

[FR Doc.76-38140 Filed 12-23-76; 12:03 pm]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS

[FRL 655-2]

PART 35—STATE AND LOCAL ASSISTANCE

Subagreements Under Grants for Construction of Treatment Works; Technical Amendments

On March 4, 1976, the Environmental Protection Agency published in the FEDERAL REGISTER as final rulemaking Appendixes C-1 (Required Provisions—Consulting Engineering Agreements) and C-2 (Required Provisions—Construction Contracts) to 40 CFR Part 35 Subpart E (41 FR 9340). These Appendixes were an integral part of regulations governing procurement under grants for construction of treatment works which had been published with Appendixes C-1 and C-2 reserved on December 17, 1975 (40 FR 58602), and which became effective on March 1, 1976.

At the time of promulgation of Appendixes C-1 and C-2, interested parties were invited to submit comments by May 15, 1976, with respect to the need for revision of the Appendixes. Approximately 80 comments were received, the large majority of which were on Appendix C-1, indicating certain areas which would benefit from revision. Subsequent to preparation of a first draft revision, public meetings, announced in the FEDERAL REGISTER (41 FR 36834), were held on September 16 and 17, 1976, to discuss that draft. A subsequent draft of the revisions was distributed to all parties who attended the public meeting. Some additional comments were received at that time. The revisions promulgated here were developed after full consideration of all comments received in writing and as the result of the public meetings.

Some of the changes being made in Appendixes C-1 and C-2 necessitate minor changes in the regulatory sections upon which they are based. Accordingly, such technical amendments to the regulations are also being promulgated at this time.

Discussion of the major comments received and changes made follows:

GENERAL COMMENTS

Several commenters questioned why EPA was issuing these Appendixes if the Agency itself is not to be a party to the contracts in which they will be included. The Appendixes are issued in order to ensure that all mandatory Federal provisions are included in each subagreement and thereby to simplify review of subagreements under EPA grants. In extraordinary circumstances, when use of the Appendixes by a grantee would not be in the best interest of the Government, deviations from the regulatory requirements for their use may be requested in accordance with Subpart I of 40 CFR Part 30.

Both Appendixes promulgated on March 4 made reference to various EPA regulations. Many commenters requested that those statements be modified to indicate that the reference is to regulations in effect on the date of execution of the agreement or contract. References to the regulations throughout both Appendixes have been modified to read "in effect on the date of execution of this agreement [contract]."

Questions have been raised as to the applicability of Appendix C-1, C-2 or both to a construction management contract. The applicability of C-1 or C-2 clauses to a project manager who acts as an agent for the grantee to manage design or construction is limited to the extent to which the project manager is actually performing design or construction tasks for which these clauses would appropriately apply. Therefore, the specific clauses which are applicable to a particular construction management contract will be determined by the EPA Regional Office on a case-by-case basis.

APPENDIX C-1 AND RELATED SECTIONS

Several commenters suggested that the Appendix C-1 provisions need not apply to the entire engineering agree-

ment, but only to those portions of the work which are funded by EPA. That was our intent and we have, therefore, specifically stated in clause 1(a) that the provisions "apply to the EPA grant-eligible work."

Several commenters suggested that the word "deficiencies" in 2(a) be changed to read "omissions" which is a term used in engineering agreements such as that jointly issued by the National Society of Professional Engineers and the American Consulting Engineers Council. The term "deficiencies," however, is the term used in engineering agreements awarded directly by the Federal government. We recognize that the terms are not identical and may connote different things. Accordingly, we have added the term "omissions" to the existing clause, so that the Engineer will "correct or revise any errors, omissions or other deficiencies."

Several commenters suggested that the Engineer should not be responsible when errors are attributable to circumstances beyond his control. Such a statement was added to 2(d). Further, a statement has been added limiting the Engineer's liability when new or advanced technology is used pursuant to applicable EPA regulations.

Clause 3 has been rewritten to clarify EPA's intent that the specific scope of work should be identified in the basic engineering services agreement to which these provisions are attached, and that work shall be performed in accordance with the EPA regulations.

Several commenters expressed strong concern about the reference to 40 CFR Part 35 Subpart E in Clause 3 because of the substance of one of the sections of those regulations. Section 35.935–8 requires the grantee to "provide and maintain competent and adequate engineering supervision and inspection of the project to insure that construction conforms with the approved plans and specifications." (Emphasis added.) Some engineers and their insurance carriers have interpreted this section to mean that EPA intended the engineer to guarantee the construction. Such guarantees are specifically excluded from some professional liability insurance policies. Such is not the intent of EPA. We do not expect the engineer to be the guarantor of the construction contract.

A paragraph has been added to clause 4 which indicates that if EPA requirements should change, the increased or decreased cost of performance shall be reflected in a modification of the agreement.

The provision for termination for convenience of the Owner in clause 5 has been tightened somewhat to indicate that such termination should be based upon some justifiable cause, such as legal or financial constraints, or transition to the next Step under the grant. A provision has been added to paragraph (e) that if the work is taken over and completed by another party, the Engineer will not be held liable for improper use of the Engineer's work.

The Remedies clause promulgated on March 4 provided for arbitration unless the parties agreed otherwise. Nevertheless, the clause was read by many commenters as mandating arbitration. That was not the intent. The clause has been revised to reduce the emphasis on arbitration, and now specifically mentions both the option of arbitration and the option of remedy in the courts. The parties could also agree in the basic agreement to some other mechanism, such as a Board of Contract Appeals, or the like, in the larger municipalities.

The Payments clause promulgated on March 4 provided for monthly progress payments with a retainage of ten percent until the completion of a Step or task within a Step. The provision, and the regulation on which it was based (§ 35.937–10) represented a significant liberalization of the previous EPA policy which provided for EPA payment only at the completion of a task or Step. Nevertheless, the new policy was viewed by many commenters as more restrictive. The revised clause provides that payment will be made in accordance with a schedule incorporated in the basic engineering agreement. If no such schedule is included, however, the clause provides for monthly progress payments. Any retainage is at the option of the grantee. No payment, however, may exceed the estimated value of services performed. Sections 35.937–10 and 35.945 are also being amended in this promulgation to reflect this change in policy.

In paragraph (d) of clause 9, many commenters suggested that the Engineer should be permitted to comment on all portions of the audit report, not just the "pertinent" portions. EPA is unable to agree to this recommendation, since an audit report for a particular project will usually include information which is relevant to only the grantee, other consulting firms, the construction contractor, etc., as well as that which is relevant to the Engineer. It would be inappropriate for EPA to permit the Engineer to comment on such portions of the report not related to the Engineer. That paragraph has been further clarified to indicate that the Engineer may comment and submit any supporting documentation on the portion of the report pertinent to him and that the final report will include the Engineer's comments if they are of reasonable length.

Section 35.935–7, the regulatory provision dealing with access to records, is being revised to clarify that it is the grantee's responsibility to insure that access is provided. We have also added to this section cross-references to the access and audit requirements in Part 30 and in the two Appendixes.

The introductory note to clause 10 has been revised to eliminate reference to the optional use of the clause for contracts of $100,000 or less. The first sentence has been clarified to indicate that either the grantee or EPA may make a defective pricing determination.

Some commenters requested that the time frame for which this price reduction clause would apply be specifically included in the clause. Since it is necessary to gain access to the Engineer's records for the purpose of determining whether there has been defective pricing, access to records for the purpose of exercising this clause by EPA is limited to the period of time specified in the access to records clause (Clause 9).

The Subcontracts clause promulgated on March 4 provided that no more than thirty percent of the work could be subcontracted without prior approval of the grantee unless the engineering agreement provided for some other figure. Several commenters suggested that that figure be changed, or that it be left blank. We have revised that paragraph to make it easy for the engineer and grantee to agree to another figure, simply by inserting it in the space provided. The thirty percent figure is retained in the event that they take no specific action.

With respect to Clause 16, Gratuities, several commenters suggested that the Engineer should be permitted to make gifts of nominal value (including meals) to grantee representatives. However, since under the terms of the regulations governing the behavior of the grantee's employees (§ 35.936–16), the grantee's employees are prohibited from accepting anything of monetary value, such a provision for gifts of nominal value would not be appropriate. Paragraph (a) has been modified to provide for grantee remedies other than termination in the event of violations.

We have been specifically asked for an interpretation of the applicability of the Gratuities clause in both Appendixes C–1 and C–2 to specialty advertising. Specialty advertising products are low in cost (such as pens, pencils, calendars, etc.) and are distributed to advertise the products or services of the advertiser. The U.S. Civil Service Commission, in defining those gifts which a Federal employee may not accept, has excluded specialty advertising products. Accordingly, EPA does not consider specialty advertising products to be within the scope of the provisions on gratuities in Appendixes C–1 and C–2.

The term "Subject Data" in clause 18 has been defined in the context of the construction grants program to indicate exactly what materials are intended to be covered by this clause.

We have received several inquiries as to whether Engineers and grantees will be required to, or whether they may, reopen engineering agreements which have included the Appendix C–1 in effect since March 1, 1976. EPA does not require that agreements which have included the current C–1, or clauses determined by the Regional Counsel to be in substantial conformance with the required clauses, be renegotiated to include the revised Appendix C–1. If grantees and their Engineers mutually agree, however, the engineering agreement may be renegotiated to include the revised Appendix C–1, for appropriate consideration which the grantee deems adequate. Regional Office approval of the renegotiated agreement, if any, is required.

APPENDIX C–2 AND RELATED SECTIONS

Appendix C–2 promulgated on March 4, 1976, did not include several of the required Federal clauses (such as remedies or termination) because it was expected that the Appendix C–2 would be used in conjunction with the "General Conditions" of the "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" which already included such clauses, among others. The regulations promulgated on December 17, 1975, had mandated the use of that document in all Step 3 construction contracts (§ 35.938–8(a)). Experience with the mandatory use of those clauses has created problems in certain areas, particularly with larger municipalities. Therefore, on September 20, 1976, EPA issued a class deviation from the mandatory requirement that each construction contract include those clauses. In this promulgation, we are eliminating the requirement from the regulations. In order to compensate for the elimination of the required Federal clauses in the standard "General Conditions" document, we have added six additional clauses to Appendix C–2. In case of any conflict between the standard "General Conditions," if elected to be used by a grantee, and Appendix C–2, Appendix C–2 provisions govern.

If, during the duration of the class deviation (for grants awarded and Step 3 construction contracts bid prior to the effective date of these regulations), a grantee elects not to utilize the standard "General Conditions," the grantee and the Regional Office must assure that the clauses used are adequate to meet all minimum Federal requirements and to define a sound and complete agreement, including those areas covered by the six new clauses. Use of the new Appendix C–2 in these cases will be helpful in achieving compliance.

The addition of the new clauses necessitated rearrangement of the order of clauses in the Appendix. This discussion will refer to the clauses by name, rather than by either the old or new numbers.

Several comments received on Appendix C–2 were identical to comments received on the parallel clause in Appendix C–1. (Many commenters did not restate such comments, but indicated that their views on C–2 were the same as those on C–1.) EPA's responses to those comments are the same as the responses to the similar C–1 clauses. We have attempted to make the identical changes in C–2 as we made in C–1 in all cases where the clauses were the same and the circumstances fit.

Some commenters took issue with the records retention requirement in the Audit clause. Grantee records are required by Federal Management Circular 74–7 to be retained for audit for three years after final payment under the grant. If a contractor is permitted to dispose of his project related records before that time, the records will not be available in many cases when audit is initiated.

Some commenters requested the elimination of the Price Reduction for Defective Cost or Pricing Data clause, or its restructuring to permit price increases. The clause applies only to negotiated procurements in excess of $100,000 and is designed to permit recovery of costs only when there has been inaccurate or incomplete pricing data used in the negotiation. The clause is based on the Federal practice in this area; no substantive changes have been made.

The General Accounting Office commented on our failure to include a termination for convenience clause in Appendix C–2. It was not in the Appendix C–2 promulgated on March 4 because it was included in the standard "General Conditions" which were then mandatory. Such a clause has been now added to Appendix C–2, in accordance with the discussion above relating to new clauses.

The new Remedies clause is based on the approach used in the Appendix C–1 Remedies clause, as a result of the public comments received on that. The remaining new clauses are all based on those clauses in use by the Federal Government in direct contracting.

OTHER TECHNICAL AMENDMENTS

We are promulgating other brief technical amendments to Subpart E which were necessitated by the promulgation of the subagreement regulations and Appendixes C–1 and C–2.

A new § 35.925–20 (Procurement) is added. This section includes the applicable procurement requirements of §§ 35.935 through 35.939 among those requirements which the Regional Administrator must determine have been met before a grant can be awarded.

Section 35.935–2 is revised. The first sentence of paragraph (a) had included as a grant condition compliance with § 35.938. That is rewritten to include compliance with the applicable procurement requirements of §§ 35.935 through 35.939. (At the time of the promulgation of § 35.935–2 in February 1974, §§ 35.936, 35.937 and 35.939 had not yet been promulgated.) In addition, that section had dealt with force account work and nonrestrictive specifications. Those subject areas are now covered by § 35.936–14 (Force account work) and § 35.936–13 (Specifications). Therefore, those provisions are being deleted from § 35.935–2.

The provisions of §§ 35.935–4 and 35.935–15 are now covered in § 35.936–2 (Grantee procurement systems; State or local law) and § 35.936–7 (Small and minority business). Sections 35.935–4 and 35.935–15 are therefore being deleted and designated "reserved" to eliminate any duplication or conflict.

Section 35.935–11 deals with project changes for which prior written approval is necessary. Sections 35.937–6(b) and 35.938–5 (d) and (g) already require written approval for procurement actions for subagreement amendments in excess of $100,000. That requirement is being added to this section for clarification.

Subsequent to the publication of the subagreement regulations, it was brought to our attention that the provision in § 35.938–6(c) for protection of the Federal and grantee interest in progress payments made for specifically manufactured equipment may not provide adequate protection for prime contractors. Therefore, on July 12, 1976, a class deviation was issued which had the effect of changing the word "or" at the end of § 35.938–6(c)(1) to "and." In this promulgation, that change is being made in the regulations.

In accordance with 40 CFR 30.125 public comment on grant regulations is solicited on a continuous basis. Comment on these regulations may be submitted in writing to the Director, Grants Administration Division (PM–216), Attention: Construction Grants Regulations, Environmental Protection Agency, Washington, D.C. 20460.

Effective date: These amendments to 40 CFR Part 35 Subpart E shall become effective on February 1, 1977, and shall govern all grants for construction of treatment works (including subsequent related projects) awarded on or after that date. The revised Appendixes may be used at the option of the grantee for new subagreements under grants awarded prior to February 1, 1977.

Dated: December 22, 1976.

JOHN QUARLES,
Acting Administrator.

40 CFR Part 35 Subpart E is amended as indicated below:

1. By adding a new § 35.925–20, reading as follows:

§ 35.925–20 Procurement.

That the applicant has complied or will comply with the applicable provisions of §§ 35.935 through 35.939 with respect to procurement actions taken prior to the award of Step 1, 2, or 3 grant assistance, such as submission of the information required pursuant to § 35.937–6.

2. By revising § 35.935–2 to read as follows:

§ 35.935–2 Procurement.

The grantee and party to any subagreement must comply with the applicable provisions of §§ 35.935 through 35.939 with respect to procurement undertaken for Step 1, 2, or 3 work. The Regional Administrator will cause appropriate review of grantee procurement methods to be made from time to time.

§ 35.935–4 [Reserved]

3. By deleting and reserving § 35.935–4.

4. By revising § 35.935–7 to read as follows:

§ 35.935–7 Access.

The grantee must insure that representatives of the Environmental Protection Agency and the State will have access to the project work whenever it is in preparation or progress and must provide proper facilities for such access and inspection. The grantee must allow the Regional Administrator, the Comptroller General of the United States, the State agency, or any authorized representative, to have access to any books, documents,

plans, reports, papers, and other records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, copies and transcriptions thereof. The grantee must insure that a party to a subagreement will afford access to such project work, sites, documents, and records. See §§ 30.-605 (Access) and 30.805 (Records) of this subchapter, Clause 9 of Appendix C–1 to this subpart, and Clause 10 of Appendix C–2 to this subpart.

5. By revising § 35.935–11 to read as follows:

§ 35.935–11 Project changes.

(a) In addition to the notification of project changes required pursuant to § 30.900–1 of this chapter, prior written approval by the Regional Administrator and (where necessary) the State agency is required for:

(1) Project changes which may (i) substantially alter the design and scope of the project, (ii) alter the type of treatment to be provided, (iii) substantially alter the location, size, capacity, or quality of any major item of equipment; or (iv) increase the amount of Federal funds needed to complete the project: *Provided*, That prior EPA approval is not required for changes to correct minor errors, minor changes, or emergency changes; and

(2) Subagreement amendments amounting to more than $100,000 for which EPA review is required pursuant to §§ 35.937–6(b) and 35.938–5(d) and (g).

(b) No approval of a project change pursuant to § 53.900 of this chapter shall commit or obligate the United States to any increase in the amount of the grant or payments thereunder unless a grant increase is approved pursuant to § 35.-955. The preceding sentence shall not preclude submission or consideration of a request for a grant amendment pursuant to § 30.900–1 of this chapter.

§ 35.935–15 [Reserved]

6. By deleting and reserving § 35.935-15.

7. By revising § 35.937–10 to read as follows:

§ 35.937–10 Subagreement payments—architectural or engineering services.

Payment by the grantee to the engineer shall be made in accordance with the payment schedule incorporated in the engineering agreement or in accordance with paragraph 7b of Appendix C–1 to this subpart. Any retainage is at the option of the grantee. No payment request made by the Engineer under the agreement may exceed the estimated amount and value of the work and services performed.

§ 35.938–6 [Amended]

8. By changing the word "or" to "and" at the end of § 35.938–6(c)(1).

9. By revising § 35.938–8 to read as follows:

§ 35.938–8 Required construction contract provisions.

Each construction contract must include the "Supplemental General Conditions" set forth in Appendix C–2 to this subpart.

10. By amending § 35.945 by deleting the entire first paragraph and substituting the following new first paragraph:

§ 35.945 Grant payments.

The grantee shall be paid the Federal share of allowable projects costs incurred within the scope of an approved project and which the grantee is currently obligated to pay, subject to the limitations of §§ 35.925–18, 35.930–5, 35.-930–6, and 35.965(b) and (c), up to the grant amount set forth in the grant agreement and any amendments thereto. Payments for engineering services for Step 1, 2 or 3 shall be made in accordance with § 35.937–10 and payments for Step 3 construction contracts shall be made in accordance with §§ 35.938–6 and 35.938–7. All allowable costs incurred prior to initiation of construction of the project must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent payment will be made for such costs.

* * * * *

11. By revising Appendixes C–1 and C–2 to read as follows:

APPENDIX C–1

REQUIRED PROVISIONS—CONSULTING ENGINEERING AGREEMENTS

1. GENERAL

(a) The Owner and the Engineer agree that the following provisions shall apply to the EPA grant-eligible work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.

(b) The work under this agreement is funded in part by a grant from the U.S. Environmental Protection Agency. Neither the United States nor the U.S. Environmental Protection Agency (hereinafter, "EPA") is a party to this agreement. This agreement which covers grant-eligible work is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939 in effect on the date of execution of this agreement. As used in these clauses, the words "the date of execution of this agreement" mean the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.

(c) The rights and remedies of the owner provided for in these clauses are in addition to any other rights and remedies provided by law or under this agreement.

2. RESPONSIBILITY OF THE ENGINEER

(a) The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the Engineer under this agreement. The Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(b) The Engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements in effect on the date of execution of this agreement.

(c) Approval by the Owner or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the technical adequacy of his work. Neither the Owner's nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

(d) The Engineer shall be and remain liable in accordance with applicable law for all damages to the Owner or EPA caused by the Engineer's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the Owner, Owner-furnished data or any third party. The Engineer shall not be responsible for any time delays in the project caused by circumstances beyond the Engineer's control. Where new or advanced processes, methods or technology (see 40 CFR 35.908) are recommended by the Engineer and are utilized, the Engineer shall be liable only for gross negligence to the extent of such utilization.

3. SCOPE OF WORK

The services to be rendered by the Engineer shall include all services required to complete the task or Step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E in effect on the date of execution of this agreement) to the extent of the scope of work as defined and set out in the engineering services agreement to which these provisions are attached.

4. CHANGES

(a) The Owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Engineer of the notification of change unless the Owner grants a further period of time before the date of final payment under this agreement.

(b) No services for which an additional compensation will be charged by the Engineer shall be furnished without the written authorization of the Owner.

(c) In the event that there is a modification of EPA requirements relating to the services to be performed under this agreement subsequent to the date of exceution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.

5. TERMINATION

(a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party: *Provided,* That no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This agreement may be terminated in whole or in part in writing by the Owner for its convenience: *Provided,* That such termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new Step) and that the Engineer is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the Owner by reason of the Engineer's default. If termination for default is effected by the Engineer, or if termination for convenience is effected by the Owner, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Engineer in performing this agreement, whether completed or in process.

(e) Upon termination pursuant to paragraphs (a) or (b) above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work taken over by the Owner for completion will be completed at the Owner's risk, and the Owner will hold harmless the Engineer from all claims and damages arising out of improper use of the Engineer's work.

(f) If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.

6. REMEDIES

Except as may be otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of or relating to this agreement or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

7. PAYMENT

(a) Payment shall be made in accordance with the payment schedule incorporated in this agreement as soon as practicable upon submission of statements requesting payment by the Engineer to the Owner. If no such payment schedule is incorporated in this agreement, the payment provisions of paragraph (b) of this clause shall apply.

(b) Monthly progress payments may be requested by the Engineer and shall be made by the Owner to the Engineer as soon as practicable upon submission of statements requesting payment by the Engineer to the Owner. When such progress payments are made, the Owner may withhold up to ten percent of the vouchered amount until satisfactory completion by the Engineer of work and services within a Step called for under this agreement. When the Owner determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Owner, he shall release to the Engineer such excesss amount.

(c) No payment request made pursuant to paragraph (a) or (b) of this clause shall exceed the estimated amount and value of the work and services performed by the Engineer under this agreement, which estimates shall be prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the Owner.

(d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the Owner a release of all claims against the Owner arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the Engineer from the operation of the release in stated amounts to be set forth therein.

8. PROJECT DESIGN

(a) In the performance of this agreement, the Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13 in effect on the date of execution of this agreement, except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908 in effect on the date of execution of this agreement.

(b) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Engineer to be available only from a sole source, unless such use has been adequately justified in writing by the Engineer.

(c) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of Sec. 204(a)(6) of the Federal Water Pollution Control Act (PL 92-500). This statute requires that no specification for bids or statement of work shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal." With regard to materials, if a single material is specified, the Engineer must be prepared to substantiate the basis for the selection of the material.

(d) The Engineer shall report to the Owner any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

(e) The Engineer shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.

9. AUDIT; ACCESS TO RECORDS

(a) The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935-7 in effect on the date of execution of this agreement. The Engineer shall also maintain the financial information and data used by the Engineer in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) in effect on the date of execution of this agreement and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and [the State water pollution control agency] or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Engineer will provide proper facilities for such access and inspection.

(b) The Engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all tier subcontracts directly related to project performance which are in excess of $10,000.

(c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The Engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above, provided that the Engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Engineer.

(e) Records under paragraphs (a) and (b) above shall be maintained and made avail-

able during performance on EPA grant work under this agreement and until three years from date of final EPA grant payment for the project. In addition, those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

10. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(This clause is applicable if the amount of this agreement exceeds $100,000.)

(a) If the Owner or EPA determines that any price, including profit, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the Engineer or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700-41), then such price or cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be subject to the Remedies clause of this agreement.

(NOTE—Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

11. SUBCONTRACTS

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically authorized by the Owner during the performance of this agreement. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior approval of the Owner.

(b) The Engineer may not subcontract services in excess of thirty percent (or ------ percent, if the Owner and the Engineer hereby agree) of the contract price to subcontractors or consultants without prior written approval of the Owner.

12. LABOR STANDARDS

To the extent that this agreement involves "construction" (as defined by the Secretary of Labor), the Engineer agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

(a) Davis-Bacon Act (40 U.S.C. 276a-276a-7);

(b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);

(c) Copeland Anti-Kickback Act (18 U.S.C. 874); and

(d) Executive Order 11246 (Equal Employment Opportunity);

and implementing rules, regulations, and relevant orders of the Secretary of Labor or EPA; and the Engineer further agrees that this agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this agreement.

13. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with EPA policy as expressed in 40 CFR 30.420-5, the Engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. UTILIZATION OF SMALL AND MINORITY BUSINESS.

In accordance with EPA policy as expressed in 40 CFR 35.936-7, the Engineer agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. COVENANT AGAINST CONTINGENT FEES

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the Owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

16. GRATUITIES

(a) If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Engineer, or any agent or representative of the Engineer, to any official, employee or agent of the Owner, of the State, or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this agreement, the Owner may, by written notice to the Engineer, terminate the right of the Engineer to proceed under this agreement or may pursue such other rights and remedies provided by law or under this agreement: *Provided,* That the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this agreement.

(b) In the event this agreement is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the Engineer in providing any such gratuities to any such officer or employee.

17. PATENTS

If this agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, in effect on the date of execution of this agreement, including Appendix B of said Part 30. In such case, the Engineer shall report the discovery or invention to EPA directly or through the Owner, and shall otherwise comply with the Owner's responsibilities in accordance with said Subpart D of 40 CFR Part 30. The Engineer hereby agrees that the disposition of rights to inventions made under this agreement shall be in accordance with the terms and conditions of aforementioned Appendix B. The Engineer shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

18. COPYRIGHTS AND RIGHTS IN DATA

(a) The Engineer agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with EPA grant funds), technical reports, operating manuals, and other work submitted with a Step 1 Facilities Plan or with a Step 2 or Step 3 grant application or which are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement (referred to in this clause as "Subject Data") are subject to the rights in the United States, as set forth in Subpart D of 40 CFR Part 30 and in Appendix C to 40 CFR Part 30, in effect on the date of execution of this agreement, including the right to use, duplicate and disclose, such Subject Data, in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this article, "grantee" as used in said Appendix C shall refer to the Engineer. If the material is copyrightable, the Engineer may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the Owner and the Federal Government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish and use such materials, in whole or in part, and to authorize others to do so. The Engineer shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts expected to produce copyrightable Subject Data.

(b) All such Subject Data furnished by the Engineer pursuant to this agreement are instruments of his services in respect of the project. It is understood that the Engineer does not represent such Subject Data to be suitable for reuse on any other project or for any other purpose. Any reuse by the Owner without specific written verification or adaptation by the Engineer will be at the risk of the Owner and without liability to the Engineer. Any such verification or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Owner and the Engineer.

APPENDIX C-2

REQUIRED PROVISIONS—CONSTRUCTION CONTRACTS

Supplemental General Conditions

1. General.
2. Changes.
3. Differing site conditions.
4. Suspension of work.
5. Termination for default; damages for delay; time extensions.
6. Termination for convenience.
7. Remedies.
8. Labor standards.
9. Utilization of small or minority business.
10. Audit; access to records.
11. Price reduction for defective cost or pricing data.
12. Covenant against contingent fees.
13. Gratuities.
14. Patents.
15. Copyrights and rights in data.
16. Prohibition against listed violating facilities.

1. GENERAL

(a) The Owner and the Contractor agree that the following supplemental general provisions shall apply to the work to be per-

formed under this contract and that such provisions shall supersede any conflicting provisions of this contract.

(b) This contract is funded in part by a grant from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is a party to this contract. This contract is subject to regulations contained in 40 CFR 35.936, 35.938, and 35.939 in effect on the date of execution of this contract.

(c) The rights and remedies of the Owner provided for in these clauses are in addition to any other rights and remedies provided by law or under this contract.

2. CHANGES

(a) The Owner may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the Owner-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation or determination) from the Owner, which causes any such change, shall be treated as a change order under this clause, *provided* that the Contractor gives the Owner written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Owner shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly: *Provided, however,* That except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required: *And provided further,* That in the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Owner a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

3. DIFFERING SITE CONDITIONS

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Owner in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Owner shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; *provided,* however, the time prescribed therefor may be extended by the Owner.

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

4. SUSPENSION OF WORK

(a) The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Owner.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner in administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Owner in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

5. TERMINATION FOR DEFAULT; DAMAGES FOR DELAY; TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Owner may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Owner may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Owner resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Owner so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Owner in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Owner does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy acts of the Owner in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Owner grants a further period of time before the date of final payment under the contract), notifies the Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the Remedies clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Owner, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Owner, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be subject to the Remedies clause of this contract.

(f) The rights and remedies of the owner provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

6. TERMINATION FOR CONVENIENCE

(a) The performance of work under this contract may be terminated by the Owner in accordance with this clause in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any

such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Owner, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title to the Owner, and deliver in the manner, at the times, and to the extent, if any, directed by the Owner, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Owner;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Owner, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner: *And provided further,* That the proceeds of any such transfer of disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Owner may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with the certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the contractor in the event of failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Owner to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Owner shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(i) The cost of such work;

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (i) above; and

(iii) A sum, as profit on (i), above, determined by the Owner to be fair and reasonable: *Provided, however,* That if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (9); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the Owner of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to paragraph (b) (7).

(f) The Contractor shall have the right to dispute under the clause of this contract entitled "Remedies," from any determination made by the Owner under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Owner has made a determination of the amount due under paragraph (c) or (e) above, the Owner shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Owner or (2) if a "Remedies" proceeding is initiated, the amount finally determined in such "Remedies" proceeding.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (2) any claim which the Owner may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Owner.

(h) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Owner a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the contractor for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

7. REMEDIES

Except as may be otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

8. LABOR STANDARDS

The Contractor agrees that "construction" work (as defined by the Secretary of Labor) shall be subject to the following labor standards provisions, to the extent applicable:

(a) Davis-Bacon Act (40 U.S.C. 276a–276a-7);

(b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327–33);

(c) Copeland Anti-Kickback Act (18 U.S.C. 874); and

(d) Executive Order 11246 (Equal Employment Opportunity);

and implementing rules, regulations, and relevant orders of the Secretary of Labor or EPA; and the Contractor further agrees that this contract shall include and be subject to the "Labor Standards Provisions for Federally-Assisted Construction Contracts" (EPA Form 5720–4) in effect at the time of execution of this agreement.

9. UTILIZATION OF SMALL AND MINORITY BUSINESS

In accordance with EPA policy as expressed in 40 CFR 35.936–7, the Contractor agrees that small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

10. AUDIT; ACCESS TO RECORDS

(a) The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935–7 in effect on the date of execution of this contract. The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of the cost submission required pursuant to 40 CFR 35.938–5 in effect on the date of execution of this contract for any negotiated contract or change order and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and [the State water pollution control agency] or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Contractor will provide proper facilities for such access and inspection.

(b) If this contract is a formally advertised, competitively awarded, fixed price contract, the Contractor agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the Contractor agrees to include paragraphs (a) through (f) of this clause in all his contracts in excess of $10,000 and all tier subcontracts in excess of $10,000 and to make paragraphs (a) through (f) of this clause applicable to all change orders thereto directly related to project performance.

(c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The Contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a), above, provided that the Contractor is afforded the opportunity for an audit exit conference, and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final EPA audit report will include written comments of reasonable length, if any, of the Contractor.

(e) Records under paragraphs (a) and (b) above, shall be maintained and made available during performance on EPA grant work under this contract and until three years from the date of final EPA grant payment for the project. In addition, those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

(f) The right of access conferred by this clause will generally be exercised (with respect to financial records) under (1) negotiated prime contracts, (2) negotiated change orders or contract amendments in excess of $10,000 affecting the price of any formally advertised, competitively awarded, fixed price contract, and (3) subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract. However, this right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, such right of access may be exercised under any type of contract or subcontract (1) with respect to records pertaining directly to contract performance, excluding any financial records of the Contractor, (2) if there is any indication that fraud, gross abuse, or corrupt practices may be involved or (3) if the contract is terminated for default or for convenience.

11. PRICE REDUCTION FOR DEFECTIVE COST OF PRICING DATA

(This clause is applicable to (1) any negotiated prime contract in excess of $100,000; (2) negotiated contract amendments or change orders in excess of $100,000 affecting the price of a formally advertised, competitively awarded, fixed price contract; or (3) any subcontract or purchase order in excess of $100,000 under a prime contract other than a formally advertised, competitively awarded, fixed price contract. Change orders shall be determined to be in excess of $100,000 in accordance with 40 CFR 35.938–5 (g). However, this clause is not applicable for contracts or subcontracts to the extent that they are awarded on the basis of effective price competition.)

(a) If the EPA Project Officer determines that any price (including profit) negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant sums because the Contractor, or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700–41), then such price or cost or profit shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be subject to the Remedies Clause of this contract.

(NOTE—Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

12. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Owner shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. GRATUITIES

(a) If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Owner, of the State, or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this contract, the Owner may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract or may pursue such other rights and remedies provided by law or under this contract: *Provided*, That the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this contract.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

14. PATENTS

If this contract involves research, developmental, experimental, or demonstration work, and any discovery or invention arises or is developed in the course of or under this contract, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, in effect on the date of execution of this contract, including Appendix B of said Part 30. In such case, the Contractor shall report the discovery or invention to EPA directly or through the Owner, and shall otherwise comply with the Owner's responsibilities in accordance with said Subpart D of 40 CFR Part 30. The Contractor hereby agrees that the disposition of rights to inventions made under this contract shall be in accordance with the terms and conditions of the aforementioned Appendix B. The Contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

15. COPYRIGHTS AND RIGHTS IN DATA

The Contractor agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with EPA grant funds), technical reports, operating manuals, and other work submitted with a proposal or grant application or which are specified to be delivered under this contract or which are developed or produced and paid for under this contract (referred to in this clause as "Subject Data") are subject to the rights in the United States, as set forth in Subpart D of 40 CFR Part 30 and in Appendix C to 40 CFR Part 30, in effect on the date of execution of this contract, including the right to use, duplicate and disclose such Subject Data, in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this

article, "grantee" as used in Appendix C shall refer to the Contractor. If the material is copyrightable, the Contractor may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the Owner and the Federal Government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish and use such materials, in whole or in part, and to authorize others to do so. The Contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts expected to produce copyrightable "Subject Data."

16. PROHIBITION AGAINST LISTED VIOLATING FACILITIES

(*Applicable only to a contract in excess of $100,000 and when otherwise applicable pursuant to 40 CFR Part 15.*)

(a) The Contractor agrees as follows:

(1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 92-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use his best efforts to comply with clean air and clean water standards at the facilities in which the contract is being performed.

(4) To insert the substance of the provisions of this clause, including this subparagraph (4), in any nonexempt subcontract.

(b) The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq. as amended by Public Law 92-604).

(2) The term "Water Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. as amended by Public Law 92-500).

(3) The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "Clean Water Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "Compliance" means compliance with Clean Air or Water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "Facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are located in one geographical area. (Secs. 109(b), 201 through 205, 207, 210 through 212, and 501(a), 502, and 511, Pub. L. 92-500 (86 Stat. 816; 33 U.S.C. 1251) as amended by Pub. L. 93-243.)

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SUBCHAPTER C—AIR PROGRAMS

[FRL 662-3]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Gasoline Vapor Recovery; Revised Compliance Dates for Small Bulk Plants

This notice of rulemaking announces changes in certain compliance dates in regulations pertaining to the collection of vapors displaced during the filling of storage tanks with gasoline and the refilling of delivery vehicles with gasoline at small bulk plants in states where such regulations are in effect. Small bulk plants are gasoline wholesale distributing facilities with an annual average gasoline throughput of 5,000,000 gallons per year or less (20,000 gallons per day × 250 days). The U.S. Environmental Protection Agency is currently conducting studies to determine the feasibility of controlling small gasoline distributing facilities such as bulk plants and to determine the degree to which they can be controlled. Evaluation of the results of these studies is not due to be completed until February 1977. Since final compliance with these regulations is presently required no later than January 1, 1977, additional time is needed to evaluate the results of these studies before a decision is made regarding the extent small bulk plants must be controlled. It would cause undue hardship to the owners or operators of these small bulk plants to require them to be in compliance with vapor recovery regulations if it is found at a later date that control of these plants is not justified. The Administrator will decide in March 1977 whether further revision of these regulations is appropriate. This action delays the final compliance date for small bulk plants and the storage containers and delivery vehicles served by them to May 31, 1977.

The state plans and regulations affected by the changes are as follows:

California: § 52.255(c) 38 FR 31251 (November 12, 1973).
Colorado: § 52.836(c) 38 FR 30823 (November 7, 1973).
Indiana: § 52.787(c) 38 FR 12349 (April 5, 1974).
Maryland: § 52.1086(c) 38 FR 33719 (December 6, 1973); § 52.1101(c) 38 FR 34252 (December 12, 1973).
Massachusetts: § 52.1147(a) 38 FR 30970 (November 8, 1973).
New Jersey: § 52.1598(c) 38 FR 31390 (November 13, 1973).
Pennsylvania: § 52.2042(c) 38 FR 32896 (November 28, 1973).
Texas: § 52.2285(c) 38 FR 30643 (November 6, 1973).

The main provision of the Stage I regulations requires recovery of 90 percent of the hydrocarbon vapors displaced from gasoline storage tanks greater than 250 gallons (1000 gallons in Texas) during refilling with exceptions for stationary storage containers with capacity of less than 550 gallons used exclusively for the fueling of implements of husbandry, any container with a capacity of less than 2000 gallons installed prior to the promulgation and gasoline transfers from storage tanks equipped with floating roofs or their equivalent. In addition, the regulations require vapor laden delivery vehicles to refill only at facilities equipped with a vapor recovery system capable of recovering 90 percent of the hydrocarbon vapors displaced from the delivery vehicles during refilling.

The Administrator finds good cause for making this rulemaking effective immediately upon the date of promulgation without proposal and the 30-day deferral of the effectiveness of the promulgation. The Administrator finds that a pre-promulgation public comment period on these regulations would be "impracticable, unnecessary, or contrary to the public interest" within the meaning of 5 U.S.C. 553(b)(B) because of the extreme shortness of time before final compliance with Stage I vapor recovery regulations is required, the hardship which would result to the owners of storage tanks served by these small bulk plants if they are forced to find alternative sources of gasoline before a final determination on the control of these plants is made, and the impact that enforcement of these regulations would have on the availability of gasoline to the customers of the small bulk plants. Public comment is invited, however, until January 28, 1977. Interested persons may submit written comments to The Division of Stationary Source Enforcement, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Michael Merrick. Following the close of the comment period, EPA will publish a response to any substantive comments received, together with any amendments to these regulations which seem justified by these comments.

This rulemaking is effective immediately, and is issued under the authority of Sections 110 and 301 of the Clean Air Act as amended (42 U.S.C. 1857c-5 and 1857g).

Dated: December 23, 1976.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

§ 52.255 [Amended]

1. In § 52.255(c)(3), subparagraph (iii) the date "January 1, 1977" is revised to read "May 31, 1977."

2. In § 52.255(c)(3), subparagraph (iv) the date "January 1, 1977" is revised to read "May 31, 1977."

3. In § 52.255(c)(3), subparagraph (v) the date "January 1, 1977" is revised to read "May 31, 1977."

4. In § 52.255(c)(3), subparagraph (vi) the date "January 1, 1977" is revised to read "May 31, 1977."

5. In § 52.255(c)(3), subparagraph (vii) the date "January 1, 1977" is revised to read "May 31, 1977."

Subpart G—Colorado

6. In § 52.336(c), subparagraph (3) is amended by adding (iv) as follows:

§ 52.336 Gasoline transfer vapor control.

* * * * *

(c) * * *

(3) * * *

(iv) Facilities which have an average annual throughput of 5,000,000 gallons of gasoline or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage containers served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also will be required to meet the provisions of this section no later than May 31, 1977.

Subpart P—Indiana

7. In § 52.787, (e) is amended as follows:

§ 52.787 Gasoline transfer vapor control.

* * * * *

(e) No person shall own or operate a facility for the filling of delivery vessels with gasoline unless the facility is equipped with a control system, which can recover or eliminate at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling. Facilities which have an average annual throughput of gasoline of 5,000,000 gallons or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage containers served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also will be required to meet the provisions of this section no later than May 31, 1977.

Subpart V—Maryland

8. Section 52.1086(c)(3) is amended by adding subparagraph (iv) as follows:

§ 52.1086 Gasoline transfer vapor control.

* * * * *

(c) * * *

(3) * * *

(iv) Facilities which have an annual average throughput of 5,000,000 gallons of gasoline or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage containers served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also are required to meet the provisions of this section no later than May 31, 1977.

9. Section 52.1101(c)(3) is amended by adding subparagraph (iv), as follows:

§ 52.1101 Gasoline transfer vapor control.

* * * * *

(c) * * *

(3) * * *

(iv) Facilities which have an annual average throughput of 5,000,000 gallons of gasoline or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage containers served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also are required to meet the provisions of this section no later than May 31, 1977.

Subpart W—Massachusetts

10. In § 52.1147(a), subparagraph (5) is amended by adding (i), as follows:

§ 52.1147 Federal compliance schedules.

* * * * *

(a) * * *

(5) * * *

(i) Facilities subject to (c)(1)(iii) of § 52.1144 of this subpart which have an average annual throughput of 5,000,000 gallons of gasoline or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage containers served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also are required to meet the provisions of this section no later than May 31, 1977.

Subpart FF—New Jersey

11. In § 52.1598(c), subparagraph (3) is amended by adding (iv), as follows:

§ 52.1598 Gasoline transfer vapor control.

* * * * *

(c) * * *

(3) * * *

(iv) Facilities which have an average annual throughput of 5,000,000 gallons of gasoline or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage containers served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also are required to meet the provisions of this section no later than May 31, 1977.

Subpart NN—Pennsylvania

12. In § 52.2042(c), subparagraph (3) is amended by adding (iv), as follows:

§ 52.2042 Gasoline transfer vapor control.

* * * * *

(c) * * *

(3) * * *

(iv) Facilities which have an annual average throughput of 5,000,000 gallons of gasoline or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage containers served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also are required to meet the provisions of this section no later than May 31, 1977.

Subpart SS—Texas

13. In § 52.2285(c), subparagraph (3) is amended by adding (iv), as follows:

§ 52.2285 Control of evaporative losses from the filling of storage vessels by 1976.

* * * * *

(c) * * *

(3) * * *

(iv) Facilities which have an annual average throughout of 5,000,000 gallons of gasoline or less are required to have a vapor recovery system in operation no later than May 31, 1977. Delivery vessels and storage vessels served exclusively by facilities required to have a vapor recovery system in operation no later than May 31, 1977, also are required to meet the provisions of this section no later than May 31, 1977.

[FR Doc.76-38210 Filed 12-28-76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Coal Leases; Diligent Development and Continued Operation

On May 28, 1976, the Department of the Interior defined, for the first time in a rulemaking, diligent development and continued operation of coal leases, 41 FR 21779 (1976). Subsequently, on August 4, 1976, Congress passed the Federal Coal Leasing Amendments Act, Pub. L. No. 94-377, 90 Stat. 1083. Then, on October 15, 1976, the Department proposed revised regulations governing diligent development and continued operation so that the regulations would be consistent with the new Act, 41 FR 45571 (1976). The Department has received and taken into consideration numerous comments on the proposed regulations. Several changes have been made and the regulations are now published as a final rulemaking. While the section numbers of the new regulations correspond to the old regulations they replace, they will at a future date be transferred to a new 30 CFR Part 3400 which will be devoted exclusively to coal.

* * * * *

Only three substantive changes have been made since the regulations were published as proposed regulations on October 15, 1976. First, the definition of LMU reserves, 43 CFR 3500.0–5(e), has been redefined to include both estimated recoverable Federal reserves in the LMU and estimated recoverable non-Federal reserves in the LMU. It no longer excludes estimated non-Federal reserves which will be mined after all the estimated Federal reserves. As was pointed out in several of the comments, this change is imperative in order to comply with section 5(b) of the new Act, supra, 90 Stat. at 1086, which requires that any mining plan for an LMU provide for the mining of the LMU reserves, whether Federal or non-Federal, in 40 years. If non-Federal reserves were excluded from an LMU, they would, contrary to the statute, be exempted from the 40-year production schedule.

Second, while a lessee may still surrender deposits in a lease and thereby reduce his LMU reserves, a surrender is now conditioned upon the approval of the authorized officer, 43 CFR 3520.2–6(c). This condition is added as an assurance against "high grading" and to make certain that deposits which are economically recoverable are not left in the ground and wasted.

Third, the deadline for achieving diligent development on coal leases issued before August 4, 1976 may, as specified, be extended, 43 CFR 3520.2–5(c). In the proposed regulations, extensions for achieving diligent development could not be granted beyond August 4, 1986, or the date on which lease terms first became subject to readjustment after August 4, 1976, whichever was later. This change to allow for longer extensions is to make certain that lessees who were issued leases before the new Act continue to be eligible, if they meet certain qualifications, for the same extensions as were allowed in the Department's first regulatory definition of diligent development on May 28, 1976. Otherwise, the effect of these regulations would be to foreshorten the period of possible extensions.

The Department has made several changes and additions to the regulations so that they reiterate provisions in the new Act. For example, 43 CFR 3503.3–2(b)(1) now specifies that the Mining Supervisor will give a notice six months in advance if he elects to cease to accept advance royalties in lieu of continued operation, and 43 CFR 3523.2–1(b)(1)(iii) now indicates that upon cancellation or relinquishment of a lease any deferred bonus payments shall be immediately payable.

Several sections have been reorganized and simplified. The definition of diligent development, 43 CFR 3500.0–5(f), has been shortened so that there is a distinction drawn only between leases issued before and after August 4, 1976; the date of readjustment is not a factor. The paragraphs applicable to extensions for meeting the diligent development requirement (previously proposed as 43 CFR 3500.0–5(f)(2)(i) and (ii)) have been transferred to 43 CFR 3520.2–5 which is the operative section on diligent development. We believe that these changes will eliminate much of the confusion expressed in the comments about the diligent development requirement.

As a result of another reorganization, all conditions for paying advance royalties now appear under 43 CFR 3503.3–2(b)(1). As proposed, several advance royalty provisions appeared in 43 CFR 3522.2–1(b).

The regulations might be better understood if several points made in the comments were specifically addressed. First, it was suggested that the Department has no authority to designate single leases as logical mining units. It is the Department's position that section 5(b) of the new Act, supra, 90 Stat. at 1086, authorizes such designations by the words "[a] logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources." While there is a requirement in section 5(b) to hold a public hearing before establishing a logical mining unit, that requirement applies only to units established by the consolidation of several leases or tracts.

Second, it was suggested that since the new Act, by limiting advance royalty payments to ten years per lease, undercut the Department's efforts of May 28, 1976 to induce production through an advance royalty program, the Department should explore alternative financial inducements. Two alternatives proposed were a special rental program and a higher production rate for meeting the continued operation requirement. The special rental program has been found to be infeasible. It was suggested that the Department in essence rename its advance royalty program of May 28, 1976 a rental program. While the Department would appear to have the authority under section 6 of the new Act, supra, 90 Stat. at 1087, to institute a special rental program, the effectiveness of the program would hinge on the authority to allow credits of rental payments against royalties. However, the legislative history indicates that the previous authority to allow such credits was removed. "[T]his section [6] eliminates a provision of current law which permits the credit of rentals against royalties," H.R. Rep. No. 84–681, 94th Cong., 1st Sess. 24 (1975). Consequently, the Department has no authority to allow the crediting of rental payments against royalties.

The Department also decided against requiring a higher production rate of two or three percent in the definition of continued operation. As the regulations now require, the mining plan for a logical mining unit must provide for a 40-year production schedule. The continued operation requirement, on the other hand, requires the production of 1 percent of the reserves each year, a production rate that will generally be less than the one specified in the mining plan. The Department views this difference in rates as providing a helpful margin in administering these regulations. If the lessee produces less than the rate specified in the mining plan, the Department may cancel the lease for failure to comply with the plan; however, if the lessee fails to produce one percent annually, the Department's discretion to decide against cancellation would be substantially limited as set forth in 43 CFR 3523.2–1(b)(1)(i). This ability to elect whether or not to cancel a lease if annual production is between 1 percent and the higher rate specified in the mining plan provides the Department with leverage to pressure those in arrears to increase production and to cancel leases when there is not a good faith effort to comply with the mining plan.

Therefore, under the authority granted under section 32 of the Mineral Leasing Act 30 U.S.C. 189, 43 CFR Parts 3500 and 3520 are hereby amended, effective immediately, as follows:

1. Paragraphs (d), (e), (f), and (g) of 43 CFR 3500.0–5 are hereby revised as follows:

§ 3500.0–5 Definitions.

* * * * *

(d) *Logical Mining Unit (LMU).* A Logical Mining Unit or LMU is an area of coal land that can be developed and mined in an efficient, economical, and orderly manner with due regard to the conservation of coal reserves and other resources. An LMU may consist of one or more Federal leaseholds, and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be contiguous, under the effective control of a single operator, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years from the first approval of a mining plan for that LMU. For purposes of this paragraph (d) "contiguous" shall mean having at least one point in common. No LMU approved after August 4, 1976, shall exceed 25,000 acres, including both Federal and non-Federal coal deposits.

(e) *Logical Mining Unit (LMU) Reserves.* LMU Reserves are defined as being equal to the sum of (1) estimated recoverable reserves under Federal lease in the LMU, and (2) estimated non-Federal recoverable reserves in the LMU. The LMU reserves associated with a Federal lease are the LMU reserves estimated as of the effective date of the LMU, of which that lease is a part, except that the LMU reserves under both paragraphs (e)(1) and (2) of this section may be adjusted by the Mining Supervisor whenever he approves a modification of the LMU boundaries, whenever the lessee surrenders deposits subject to the LMU, or whenever significant new information becomes available about the amount of such reserves, including the time at which a mining plan is approved.

(f) *Diligent Development.* (1) Diligent development of any Federal coal lease issued after August 4, 1976, means the timely preparation for and initiation of production of coal from the LMU of which the lease is a part so that coal is

actually produced in commercial quantities by the end of the tenth year from the effective date of the lease. For the purpose of this subparagraph (1), commercial quantities means one percent of the LMU reserves.

(2) Diligent development of any coal lease which was issued before August 4, 1976, means the timely preparation for and initiation of production of coal from the LMU so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in 43 CFR 3520.2–5. For the purpose of this subparagraph (2), commercial quantities means one-fortieth of the LMU reserves.

(g) *Continued Operation.* Continued operation means the production of coal in the amount of one percent of the LMU reserves for each of the first two years following the achievement of diligent development, and an average amount of one percent of the LMU reserves associated with the lease thereafter. The annual average amount shall be computed on a three year basis, and the three-year period for which the average shall be computed shall consist of the year in question and the two preceding years.

(2) 43 CFR 3503.3–2(b)(1) is amended by the addition of the following:

§ 3503.3–2 General statement on royalties.

* * * * *

(b) * * *

(1) The Mining Supervisor shall have discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year. The advance royalty for each lease shall be based on a percent of the value of a minimum number of tons of coal, and the percent shall not be less than the percent prescribed in that lease for the production royalty. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the date of approval of the mining plan for the LMU of which the lease is a part; for any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976. Advance royalties shall not be paid for more than ten years in all during the life of any lease, including the life of the lease after readjustment. No payment of an advance royalty during the first 20 years of a lease may be used as a credit against production royalty due after the 20th year of that lease. The Mining Supervisor may, upon notifying the lessee six months in advance, cease to accept advance royalties in lieu of the requirement of continued operation.

3. 43 CFR 3520.2–1 is amended by the addition of the following:

§ 3520.2–1 Duration of leases.

* * * * *

(a) * * *

(3) *Coal.* A coal lease shall be for a period of 20 years and as long thereafter as coal is produced annually in commercial quantities from that lease or the LMU of which it is a part. As the term "commercial quantities" is used in this subparagraph (3) it means quantities of coal sufficient to meet the requirements for continued operation under § 3500.0–5 (g) of this chapter.

4. 43 CFR 3520.2–5 is amended to read as follows:

§ 3520.2–5 Coal: Diligent development and continued operation.

(a) Section 7 of the Mineral Leasing Act (30 U.S.C. 207) provides that each coal lease shall require (1) diligent development, and (2) either continued operation or in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advance royalty. The Secretary has determined that the public interest will be served by authorizing the Mining Supervisor to permit payment of an advance royalty in lieu of continued operation for any particular year. Provisions for advanced royalties are described in § 3503.3–2(b)(1) of this chapter.

(b) Each coal lease shall be subject to the requirements of diligent development and continued operation and shall remain subject to the requirement of continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee.

(c) In the case of coal leases issued before August 4, 1976, the ten-year period by the end of which diligent development must have been achieved may be increased as follows:

(1) Upon application of the lessee, the ten-year period shall be extended by an amount of time equal to the period during which diligent development is in the opinion of the Secretary, significantly impaired by (i) a strike, the elements, or casualties not attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, or (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In the determination of whether any of the conditions listed in subdivisions (i), (ii) and (iii) of this subdivision occurred and whether one or more of those conditions did in fact significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under (iii) any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Upon application of the lessee, the Secretary may grant one extension, not exceeding five years, of the ten-year period when the lessee shows to the satisfaction of the Secretary that diligent development cannot be achieved within the ten-year period because of (i) time needed to complete development of advanced technology, e.g., in situ, gasification or liquefaction processes; (ii) the large magnitude of the project (ordinarily large magnitude means a mine in which the production in the first year after the end of the extended period for diligent development is expected to be at least two million tons if an underground mining operation or five million tons if a surface mining operation); or (iii) a contract or its equivalent which is a firm commitment for the sale or use of the first one-fortieth of the LMU reserves after the ten-year period. Irrespective of the reason for granting an extension, the lessee must produce the first one-fortieth of the LMU reserves before the end of the extension.

(d) At the time when the Secretary grants an extension under paragraphs (b) and (c) of this section, he shall notify the lessee of the revised date by which he must produce coal in commercial quantities.

5. 43 CFR Subpart 3520 is amended by adding the following:

§ 3520.2–6 Coal: Logical mining unit.

(a) *Establishment and modification of logical mining units.* Every Federal coal lease will automatically be considered by itself an LMU as of the effective date of the lease or June 1, 1976, whichever is later, and may later be included in an LMU with other Federal coal leases or with interests in non-Federal coal deposits, or both. An LMU containing any interest other than a single Federal lease will become effective only at the direction of the Mining Supervisor or upon its approval by the Mining Supervisor when it is requested by the lessee; the Mining Supervisor shall not direct or approve the establishment of such an LMU unless he has determined that the maximum economic recovery of all Federal deposits in the LMU will be served thereby. The boundaries of an LMU may later be changed either upon application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer or by direction of the Mining Supervisor after consultation with the authorized officer.

(b) *Amendment of lease terms.* When a Federal coal lease is included in an LMU with other Federal coal leases or with interests in non-Federal coal deposits, the terms and conditions of the lease will be amended so that they are not inconsistent with the requirements imposed on that LMU of which it has become a part. In particular, diligent development, continued operation, and production in commercial quantities anywhere within the LMU, with respect to either Federal or non-Federal coal deposits, shall be deemed to have occurred on each Federal lease in the LMU. The rental and royalty payments on all Federal leases in an LMU shall be combined and advanced royalties paid on any Federal lease in that LMU may, at the request of the operator of the LMU, be credited against those combined royalties.

(c) *Computation of LMU reserves.* The lessee may, upon approval of the authorized officer, surrender his rights to any

deposits, and, if he does so, the LMU reserves shall be adjusted. When the Mining Supervisor is determining the LMU reserves, he shall consult the lessee as to any deposits (such as deposits in specified strata) subject to his lease which the lessee does not intend to mine and the rights to which the lessee is prepared to surrender in order to decrease the LMU reserves upon which the requirements of diligent development, continued operation, and production in commercial quantities will be based.

6. 43 CFR 3522.2–1 is amended to read as follows:

§ 3522.2–1 Terms and conditions.

(a) *Potassium and phosphate.* The terms and conditions of potassium and phosphate leases are subject to readjustment at the end of each 20-year period succeeding the effective date of the lease unless otherwise provided by law at the time of the expiration of such periods. Before the expiration of each 20-year period, whenever feasible, the lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Within 30 days after receipt of the notice, unless the lessee files his objection to the proposed readjusted terms, or the lessee files a relinquishment of the lease, he will be deemed to have agreed to such readjusted terms.

(b) *Coal.* All coal leases will be subject to readjustment at the end of the first 20-year period following the issuance of the lease and at the end of each ten-year period thereafter. Before the expiration of the initial 20-year period or any succeeding 10-year period thereafter, the authorized officer shall if it is feasible, notify the lessee of any proposed readjustment of terms and conditions or that no readjustment will be made. Unless the lessee within 30 days after receipt of notice of any proposed readjustment from the authorized officer files either an objection to the proposed readjustment or a relinquishment of his lease, he will be deemed to have agreed to the readjusted terms. If the date on which a coal lease became liable for readjustment of terms and conditions occurred before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee that no readjustment would be made, the terms and conditions of that lease shall be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1975.

7. 43 CFR 3523.2–1(b)(1) is amended by the insertion of "(i)" after the word "Coal" and by adding the following subdivisions (ii) and (iii):

§ 3523.2–1 Judicial proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Any coal lease issued or readjusted on or after August 4, 1976, on which the lessee does not meet diligent development requirements shall be terminated. Any other coal lease on which the lessee does not meet diligent development requirements will be subject to cancellation in whole or in part. Any coal lease on which the lessee does not meet either continued operation or advance royalty requirements will be subject to cancellation in whole or in part. In deciding whether to cancel a lease under the two preceding sentences, the Secretary will not consider adverse circumstances which arise out of: (A) normally foreseeable cost of compliance with requirements for environmental protection; (B) commonly experienced delays in delivery of supplies or equipment; or (C) inability to obtain sufficient sales. The requirements as to notice included in subdivision (i) of this subparagraph are applicable to cancellations under this subdivision (ii) also.

(iii) Should a lease be cancelled or relinquished for any reason, all deferred bonus payments shall be immediately payable and all rentals and royalties, including advance royalties already paid or due, will be forfeited to the United States.

Dated: December 22, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76–38174 Filed 12–28–76;8:45 am]

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5611]

ALASKA

Clarification of Public Land Order No. 5561, As Amended

Pursuant to the authority vested in the Secretary by Executive Order No. 10355 of May 26, 1952 (17 FR 4831), and otherwise including but not limited to section 6(g) of the Alaska Statehood Act, 72 Stat. 339, and section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Subject to valid existing rights, paragraph 2 of Public Land Order No. 5561 of December 16, 1975, appearing in FEDERAL REGISTER issue of December 19, 1975, at page 58857, as amended by Public Land Order No. 5581 of March 31, 1976, appearing in the FEDERAL REGISTER issue of April 6, 1976, at page 14518, is hereby further amended to provide that the preference right for State selections under section 6(g) of the Alaska Statehood Act upon the revocation or termination of any reservation shall cease at 11:30 p.m. EST, April 1, 1977. Thereafter the land shall be available for selection under section 14(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)) and for State selection under the Alaska Statehood Act.

2. Paragraph 2 of Public Land Order No. 5561, as amended by Public Land Order No. 5581, provided that upon the termination of said orders the lands would be available for State selection unless otherwise provided in any statute, regulation, court decree, contract, or public land order.

The purpose of this order is to provide for the termination of the preference right of selection vested in the State of Alaska by section 6(g) of the Alaska Statehood Act.

This order applies to all those lands previously withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act, 43 Stat. 1610, and not previously selected by any Alaska Native Corporation and which are otherwise vacant and unappropriated or reserved from State selection.

H. GREGORY AUSTIN,
Acting Secretary of the Interior.

DECEMBER 27, 1976.

[FR Doc.76–38382 Filed 12–28–76;8:52 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN PUBLIC ASSISTANCE PROGRAMS

Need and Amount of Assistance Exclusion of SSI beneficiaries from AFDC

Correction

In FR Doc. 76–36568, appearing at page 54489 in the issue of Tuesday, December 14, 1976, the first line of § 233.20(a)(3)(vi) should read "Except for child support obligations assigned pursuant to § 232.11 of this chapter, if the State agency holds rela-".

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76–1197]

PART 1—PRACTICE AND PROCEDURE

Schedule of Fees; Suspension

Adopted: December 22, 1976.

Released: December 23, 1976.

1. On December 16, 1976 the United States Court of Appeals for the District of Columbia Circuit handed down opinions in four cases[1] remanding to the Commission various orders relating to our schedule of fees. For the reasons explained below, we have determined that the appropriate, immediate response to these decisions is a suspension of any further collection of fees effective January 1, 1977 and instruction to the staff to undertake a study of the legal and administrative implications of refunding fees in order that the Commission may make a determination of the extent and nature of any refund of fees that may be necessary.

[1] *National Cable Television Ass'n, Inc., et al. v. FCC*, Nos. 75–1053, *et al.*; *National Ass'n of Broadcasters, et al. v. FCC*, Nos. 75–1087, *et al.*; *Electronics Industries Ass'n, et al. v. FCC*, Nos. 75–1120, *et al.*; *Capital Cities Communications, Inc., et al. v. FCC*, Nos. 75–1503, *et al.*

2. The Court's decisions in the National Cable and Electronics Industries cases remanded to the Commission its 1975 action adopting a new schedule of fees in response to the Supreme Court's decision in "NCTA v. United States," 415 U.S. 336 (1974). See Report & Order, Schedule of Fees, 50 FCC 2d 906, reconsid. grtd in part & denied in part, 52 FCC 2d 333 (1975). That revised schedule was adopted in an effort to comply with the mandate of Title V of the Independent Offices Appropriations Act of 1952, 5 U.S.C. 483a. However, at the time we adopted that schedule, we emphasized the difficulty of complying with requirements of the Supreme Court's ruling in the NCTA decision, and in a separate statement Chairman Wiley, joined by the full commission, urged that Congress consider legislation on this subject:

> The Commission believes that its revised fee schedule represents a reasoned and legally sustainable response to the limitations imposed upon the agency by the Supreme Court's NCTA decision and its mandate under Title V * * * to render the agency "self-sustaining to the full extent possible." However, the present circumstance in which the Commission finds itself cries out for guidance from the Congress. The Supreme Court's ruling not only sharply circumscribes the Commission's ability to recover regulatory costs, but contains language sufficiently ambiguous to encourage renewed litigation and judicial review of any fee schedule promulgated by this agency. Therefore, the members of this Commission join me in unanimously requesting remedial or clarifying legislation.

50 FCC 2d at 937.

3. Those views ere, on several occasions, called to the attention of the Congress in testimony before both House and Senate Committees. In addition, in the Report of the House Appropriations Committee on the Commission's fiscal year 1977 budget, the Committee concluded that guidance was needed from Congress in the "entire area of regulatory fee policy" and urged that the appropriate Senate and House Committees consider the matter. See H. Rep. No. 94-1220, 94th Cong., 2d Sess. 35 (1976).

4. However, no legislative action has been taken to clarify the Commission's authority to assess fees for the services it performs, and what was a problem that warranted Congressional attention in 1975 has now become, as a result of these recent decisions, a situation which demands legislative action if the Commission is to continue collecting fees. The National Cable and Electronics Industries decisions, when read with the Supreme Court's NCTA decision, place constraints on the implementation of the statute (5 U.S.C. 483a) that make it extremely difficult for the Commission to adopt a fee schedule that will successfully withstand judicial scrutiny. We are still studying that issue, but the questions raised are sufficiently serious that pending further review of the decisions all fee collections will be suspended.

5. The Court's other two decisions, the National Association of Broadcasters case and the Capital Cities case, remanded Commission orders that had denied requests for refund of fees. See, e.g., Refund of Fees, 50 FCC 2d 730, reconsid. denied, 52 FCC 2d 666 & 53 FCC 2d 207 (1975). The Court made clear that on remand the Commission was to refund some portion of the fees it has collected since adoption of the 1970 schedule. Accordingly, we are directing the staff to provide us with proposals as to the legal and administrative implications of the Court's refund decisions in order that we may make a determination at the earliest practicable date of the appropriate amounts to be refunded and the procedures under which any refund of fees will be carried out. It would be difficult to overstate the enormity of the administrative burden any substantial refund action will place on the Commission. This process cannot be accomplished overnight. It is our intention to determine the amounts of appropriate refunds as soon as possible and, within the limits imposed by available staff and administrative resources, to return those amounts in an expeditious manner. Interested parties are advised that any decisions in this area will be announced promptly. Inquiries will not speed the process.

6. For the reasons stated above, it is ordered that Subpart G of Part 1 of the Commission's Rules, 47 CFR 1.1101-1.1120, is suspended effective January 1, 1977. Pending further Commission action, fees normally required by those rules must not be submitted to the Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-38175 Filed 12-28-76;8:45 am]

[Docket No. 19528; FCC 76-1139]

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Message Toll Telephone Service and Wide Area Telephone Service

Adopted: December 14, 1976.

Released: December 28, 1976.

In the Matter of proposals for new or revised classes of interstate and foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS).

In its various decisions in this docket[1] the Commission has established a registration program (Part 68 of the Commission's Rules and Regulations) designed to allow consumers to connect terminal equipment to the nationwide telephone network without using carrier-supplied protective couplers (connecting arrangements). This program is applicable both to equipment provided by users (customer-supplied equipment) and to equipment provided by telephone companies (carrier-supplied equipment).[2]

2. The grandfather provisions in Part 68 of the Commission's Rules are contained in § 68.2, and provide that:

> (a) Except as provided for in paragraphs (b) and (c), the rules and regulations in this Part apply to the direct connection after May 1, 1976 of all terminal equipment other than coin telephones, and PBX and key telephone equipment to the telephone network, for use in conjunction with all services other than party line service, and to the direct connection after August 1, 1976 of all terminal equipment other than coin telephones to the telephone network, for use in conjunction with all services other than party line service.
>
> (b) Unless otherwise ordered by the Commission, all items of equipment, other than PBX and key telephone equipment, of a type directly connected to the network as of May 1, 1976 may be connected thereafter up to January 1, 1977, and may remain connected for life, without registration, unless subsequently modified.
>
> (c) Unless otherwise ordered by the Commission, all PBX and key telephone equipment of a type directly connected to the network as of August 1, 1976 may be connected thereafter up to January 1, 1977, and may remain connected for life, without registration, unless subsequently modified.

3. The effect of this rule as it relates to equipment other than PBX and key telephone equipment[3] is as follows:

(a) Installations before May 1, 1976. Any equipment lawfully connected to the telephone network before May 1, 1976, may continue to be so connected without registra-

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[1] The registration program was established in a First Report and Order (hereafter, November Order), 56 F.C.C. 2d 593 (1975), and initially applied to all terminal equipment other than PBXs, key telephone equipment, main telephones and coin telephones. On February 13, 1976, the Commission issued a Memorandum Opinion and Order, 57 F.C.C. 2d 1216, in reconsideration of the November Order which generally affirmed the conclusions and principles of the November Order, but which established certain "grandfather" provisions concerning equipment installed during a transition period established for phasing in registration of terminal equipment. On March 15, 1976, the Commission released a Memorandum Opinion and Order, 58 F.C.C. 2d 716, which substantially modified the registration program's technical standards. In a Second Report and Order released March 18, 1976, 58 F.C.C. 2d 736, the Commission extended the registration program to include PBXs, key telephone equipment and main telephones (leaving coin telephones and equipment connected with party-line telephone service excluded from the scope of the registration program). In response to petitions for clarification of earlier rulings in this proceeding, the Commission released a Memorandum Opinion and Order on April 28, 1976, 59 F.C.C. 2d 83, which, among other things, clarified the grandfather provisions and transition period requirements of Part 68 of the Commission's Rules. On October 18, 1976, the Commission released a Memorandum Opinion and Order, FCC 76-928, which generally affirmed its March 18, 1976 Second Report and Order.

[2] 56 F.C.C. 2d at 601.

[3] For PBX and key telephone equipment, all references to May 1, 1976 should be changed to read Aug. 1, 1976.

tion. The Part 68 rules generally do not apply to such equipment installations.

(b) Installations between May 1, 1976 and January 1, 1977. Equipment installed during this time period may be connected in one of three manners. First, if the equipment is registered pursuant to Part 68 of the Rules, it may be directly connected to the telephone network. Second, if the equipment is of a type directly connected to the network as of May 1, 1976, such equipment type is grandfathered, and may be directly connected to the network without registration. Third, if the equipment is of a type not directly connected to the network as of May 1, 1976, such equipment may be connected pursuant to tariff provisions in effect prior to May 1, 1976; i.e., connected through a telephone company-supplied connecting arrangement. (This third option is available because the carrier's connecting arrangements are grandfathered.)[4]

(c) Installations after January 1, 1977. All equipment directly connected to the telephone network after January 1, 1977 must be registered pursuant to Part 68 of the Rules.

4. During the course of this proceeding, certain parties appealed one or more of the Commission's decisions herein to the United States Court of Appeals for the Fourth Circuit. By orders of April 28, 1976 and June 16, 1976, the court stayed the Commission's decisions herein as they relate to main and extension telephones, PBXs, key telephone systems and all carrier-supplied equipment.

5. We now have before us a Petition for Relief, filed October 29, 1976, by the Computer and Business Equipment Manufacturers Association (CBEMA), which requests that AT&T be required to continue providing connecting arrangements for at least six months following January 1, 1977 for use in conjunction with unregistered customer-provided equipment. The Bell System companies filed a response in which they agreed with CBEMA's request insofar as it requests the Commission to authorize continued telephone company-provision of unregistered data access arrangements for an interim period subsequent to January 1, 1977. We are also in receipt of letters from Marquette Electronics, Inc. and Rixon, Inc. requesting in one form or another an extension of the January 1, 1977 date.

6. In consideration of the pleadings mentioned in the preceding paragraph, as well as the reasons stated below, we believe that a five month extension of the January 1, 1977 date to June 1, 1977 is in the public interest. As a result of the court litigation concerning the Registration Program and the various possible outcomes which may result from that litigation, there has been a substantial amount of uncertainty concerning the effectiveness of various aspects of the program. This is highlighted by the fact that on April 28, 1976, just three days before the effective date of the program, the U.S. Court of Appeals stayed the entire program, and then on June 16, 1976, the court lifted the stay except as it related to main and extension telephones, PBXs, key telephone systems and all carrier-supplied equipment. Thus at the outset the program stated a month and a half later than had been planned.

7. The program was further delayed by the late release, July 12, 1976, of the Report and Order in Docket No. 20774 prescribing the standard plugs and jacks required by the rules to be used with registered terminal equipment (FCC 76-617, 41 FR 28694). For data equipment manufacturers, the earlier wording of one of our technical rules, § 68.314, would have required significant modifications or redesign of their equipment. However, in our October 18, 1976 Memorandum Opinion and Order, FCC 76-928 (41 FR 46298, October 20, 1976), we rectified this problem by liberalizing the requirements of this rule.

8. As a result of these late additions and modifications to the rules and the uncertainty surrounding the court litigation, many manufacturers have been hesitant to undertake the time and expense to have their products registered. Thus we have received a very small number of applications for registered protective circuitry (which would replace carrier-supplied connecting arrangements) or for data equipment. In view of this, it is questionable whether manufacturers can meet the market quantity requirements by January 1, 1977.

9. Therefore in order to assure an orderly transition during which the various suppliers may bring their equipment into compliance with our rules and secure registration, we will extend the January 1, 1977 date to June 1, 1977. This will allow the continuation of all three options stated in paragraph 3(b) above for an additional five months.[5]

10. Accordingly, *It is ordered* That the Petition for Relief filed by CBEMA is granted.

11. *It is further ordered,* pursuant to Sections 1, 2(a), 4(i), 4(j), 201–205, 208, 215, 313, 403, 303, 410 and 602 of the Communications Act, That Part 68 of the Commission's Rules and Regulations is amended as follows effective December 30, 1976,[6] subject to the court's stay referred to in paragraph 4 above.

12. *It is further ordered,* That AT&T is directed to file tariffs in accordance with this Order.

(Secs. 4, 201–205, 208, 215, 218, 313, 314, 403, 410, 602, 48 Stat., as amended, 1066, 1070–1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102, 47 U.S.C. 154, 201–205, 208, 215, 218, 313, 314, 403, 410, 602.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT MULLINS,
Secretary.

[4] For a complete discussion of the terms "directly connected" and "of a type," as well as other clarifications of the grandfather provisions, see 59 F.C.C. 2d 83 (1976).

[5] In view of the action we are taking herein, it is unnecessary to address CBEMA's argument that before AT&T can cease providing connecting arrangements, it must obtain a Section 214 discontinuance authorization.

[6] Since the rule we are modifying would, absent this modification, take effect on Jan. 1, 1977, the public interest requires that this change become effective before Jan. 1, 1977.

The Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) are amended as follows:

Section 68.2 (a), (b) and (c) are amended to read as follows:

§ 68.2 Scope.

(a) Except as provided for in paragraphs (b) and (c), the rules and regulations in this Part apply to the direct connection after May 1, 1976 of all terminal equipment other than coin telephones, and PBX and key telephone equipment to the telephone network, for use in conjunction with all services other than party line service, and to the direct connection after August 1, 1976 of all terminal equipment other than coin telephones to the telephone network, for use in conjunction with all services other than party line service.

(b) Unless otherwise ordered by the Commission, all items of equipment, other than PBX and key telephone equipment, of a type directly connected to the network as of May 1, 1976 may be connected thereafter up to June 1, 1977—and may remain connected for life—without registration, unless subsequently modified.

(c) Unless otherwise ordered by the Commission, all PBX and key telephone equipment of a type directly connected to the network as of August 1, 1976 may be connected thereafter up to June 1, 1977—and may remain connected for life—without registration, unless subsequently modified.

[FR Doc.76-38176 Filed 12-28-76;8:45 am]

[Docket No. 20898; FCC 76-1144]

PART 73—RADIO BROADCAST SERVICES

Noncommercial Educational Broadcast Stations; Program Logs

Adopted: December 14, 1976.

Released: December 30, 1976.

In the matter of amendment of the Commission's rules and regulations concerning program logs for noncommercial educational broadcast stations.

1. In a Notice of Proposed Rule Making released on September 2, 1976 (FCC 76-793) (41 FR 37347, September 3, 1976), the Commission looked toward amending Part 73 of its rules and regulations with respect to program logs of noncommercial educational broadcast stations.

2. The proposed amendments would (a) permit such stations to log the type and source of programs according to definitions in the renewal form for those stations (FCC Form 342) instead of the definitions in Notes 1 and 2 to the rules on program logging; (b) provide the alternative of putting certain donor announcement information in the station's public file instead of the program log; and (c) promulgate a separate program logging rule common to all stations licensed or operating as noncommercial (§ 73.582).

3. Comments supporting the proposals were filed by Fort Wayne Bible College, licensee of WBCL(FM), Fort Wayne, Indiana; Ohio State University, licensee of Stations WOSU, WOSU-FM and WOSU-TV, Columbus, Ohio; and Tennessee Temple College, licensee of WDYN (FM), Chattanooga, Tennessee. There were no comments opposing the amendments. No reply comments were filed.

4. It should be noted that the Notice of Proposed Rule Making herein was issued after the Idaho State Board of Education[1] and the Technical Director of WBAU[2] had made similar proposals in Docket No. 20600 (program log rules) which the Commission found to be outside the scope of that proceeding but to merit consideration in a new rule making proceeding.[3]

LOGGING OF PROGRAM TYPES AND SOURCES

5. Noncommercial educational broadcast stations have been required to log program types and sources in accordance with the definitions thereof in Notes 1 and 2 to the program logging rules. Note 1 defines types under the primary categories of "Agricultural," "Entertainment," "News," "Public Affairs," "Religious," "Instructional," "Sports," "Other," and subcategories of "Editorials," "Political" and "Educational Institution."

6. In their renewal applications, noncommercial educational stations have been required to set forth programming information based on definitions of program types and sources in that form (FCC Form 342). The form defines types as "Instructional," "General Educational," "Performing Arts," "Public Affairs," "Light Entertainment" and "Other."[4]

7. With respect to program sources, Note 2 of the program logging rules differs from Form 342 only in omitting the "Other" category and combining it with "REC" (recorded program).

8. To complete the renewal form, it has been incumbent upon such licensees, as a practical matter, to keep program logs based on two differing sets of definitions.

9. Ohio State University claims in its comments that "the present practice has, in effect, rendered the program logs virtually useless in preparing the renewal applications for noncommercial stations."

10. Fort Wayne Bible College states in its comments that "the two types of broadcast stations—commercial and noncommercial—have important differences and deference to those differences through separate, more applicable definitions should be set forth uniformly in both the Commission's Rules and its required Forms."

11. Tennessee Temple College agrees in its comments that "by adopting a uniform system of categorizing program types for noncommercial stations the Commission will simplify program logging procedures as well as renewal application preparation for noncommercial educational stations," and "moreover, this action will recognize the operational differences between commercial and noncommercial stations which should be reflected in the definitions utilized for program logging purposes."

12. Our program logging rules for noncommercial educational stations will be amended to specify the same definitions of program types and sources as contained in FCC Form 342 except that news will be specified as a separate program category instead of being included in the definition of "Other" programs. Although FCC Form 342 does not call for an accounting of time devoted specifically to news, the Commission intends to institute a proceeding for the purpose of reviewing what the form itself should realistically require and, in the meantime, will avoid any revision in the program logging rules which might give an appearance of downgrading the matter of news. It should also be noted that there is presently before the Commission a rule making proceeding, Docket No. 20735, looking into overall licensing and operational matters with respect to FM noncommercial educational stations.

DONOR INFORMATION

13. Our rules require an entry in the program log of the name of the donor or person furnishing materials or services, in accordance with the provisions of §§ 73.1212 and 73.503 including Notes 1 through 5 thereto. Idaho State Board of Education had claimed that certain nationally distributed programs such as "Sesame Street" have as many as five or six donors who are announced; and that if all donors are logged each time a program is broadcast, such log entries would require a relatively large amount of electronic memory in automated logging schemes. Idaho suggested the rules be amended so that the licensee of a noncommercial educational station could simply indicate with a "D" or similar designator beside the program name (on the program log) that a donor announcement had been made and, in the key to abbreviations section of the log, indicate that the name of the donor could be found in the station's public file. Idaho contended that, since donor announcements would remain the same for an entire year of "Sesame Street" and similar series of programs, the amount of work involved in recording such information would be significantly reduced, and that, since public files are legally more accessible than program logs, the public information function of those log entries would be better accomplished.

14. We set forth such a provision in our Notice of Proposed Rule Making but noted that we had reservations about its merits and would withhold judgment until a study of the comments was made.

15. Each of the comments supported the provision. Fort Wayne Bible College stated the provision would greatly simplify the logging process as well as reduce the cost of program logging and "is in the best interest of the public" inasmuch as "information as to the organizations or individuals supporting noncommercial educational programming would be even more available to the public if it is contained in the public inspection file as those files are undoubtedly more accessible than daily program logs" and, accordingly, "the purpose of the donor announcements—to let the public know who is supporting the programs broadcast—is better served."

16. We conclude that the proposal is meritorious as an alternative to be used at the option of the licensee, as set forth in § 73.582(b) (2) in the Appendix hereto.

17. We remind licensees who use the alternative that program logs submitted to the Commission must include a list of the names of donors indicated thereon.

SEPARATE PROGRAM LOGGING RULE

18. A separate program logging rule common to all stations licensed as noncommercial educational was supported in each of the comments as giving proper recognition to operational differences between commercial and noncommercial educational stations. We are revising the program logging rule for noncommercial educational FM, i.e. § 73.582, and providing in the program logging rules of the other services (AM, FM, TV) that stations licensed or operating as noncommercial educational shall maintain a program log in accordance with the provisions of § 73.582.

19. In view of the foregoing, we conclude that the public interest would be served by adoption of the amendments as proposed.

20. Authority for adoption of the amendments contained in the Appendix hereto is set forth in Sections 4(i) and 303 (j) and (r) of the Communications Act of 1934, as amended.

21. Accordingly, *it is ordered*, That, effective January 27, 1977, Part 73 of the Commission's Rules and Regulations is amended as set forth below.

22. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

1. Section 73.112(a) is amended to read as follows:

§ 73.112 Program log.

(a) A program log shall be kept in accordance with the provisions of § 73.111, for each broadcast day, which, in this context, means from the station's sign-on to its sign-off, or from midnight to midnight for stations operating 24 hours a day. A station licensed or operating as noncommercial educational shall main-

[1] Licensee of Stations KAID-TV, Boise; KBGL, Pocatello; and KUID-TV, KUID-FM, Moscow.

[2] Adelphi University, Garden City, New York.

[3] Para. 44, *Report and Order*, Docket No. 20600, released June 30, 1976.

[4] "Other" programs include news and sports.

tain its program log in accordance with the provisions of § 73.582 (Subpart C).

* * * * *

2. Section 73.282(a) is amended to read as follows:

§ 73.282 Program log.

(a) A program log shall be kept in accordance with the provisions of § 73.281, for each broadcast day, which, in this context, means from the station's sign-on to its sign-off, or from midnight to midnight for stations operating 24 hours a day. A station licensed or operating as noncommercial educational shall maintain its program log in accordance with the provisions of § 73.582 (Subpart C).

* * * * *

3. Section 73.582 is amended to read as follows:

§ 73.582 Program log.

(a) A program log shall be kept in accordance with the provisions of § 73.581 for each broadcast day, which, in this context, means from the station's sign-on to its sign-off, or from midnight to midnight for stations operating 24 hours a day.

(b) *Entries:* The following entries shall be made in the program log;

(1) *For each program.* (i) An entry identifying the program by name or title.

(ii) Entries which indicate the time each program begins and ends. If programs are broadcast during which separately identifiable program units of a different type or source are presented, and if the licensee wishes to count such units separately, the beginning and ending time for the longer program need be entered only once for the entire program. The program units which the licensee wishes to count separately shall then be entered underneath the entry for a longer program, with the beginning and ending time of each such unit, and with the entry indented or otherwise distinguished so as to make it clear that the program unit referred to was broadcast within the longer program.

(iii) An entry classifying each program as to source, using the definitions set forth in Note 1 at the end of this section. (For network programs, also give name or initials of network, e.g. PBS, NPR, etc.)

(iv) An entry classifying each program as to type, using the definitions set forth in Note 2 at the end of this section.

(v) An entry for each program presenting a political candidate, showing the name and political affiliation of such candidates.

(2) *For donor announcement.* An entry giving the name(s) of any donor(s), or person(s) furnishing money, service or other valuable consideration, in accordance with the provisions of § 73.503 including Notes 1 through 5 thereto and § 73.1212, respectively; and the entry shall constitute a representation that identification was announced on the air in accordance with the provisions of the said Sections and Section 317 of the Communications Act of 1934, as amended. As an alternative to giving the name, an entry of the word Donor(s) may be made, provided that the log shall clearly indicate that the name of the donor(s) or person(s) is retained in the station's public file. Such information for a given series of programs need be entered in the public file only once, provided the information is identical for each program in the series. The information shall be retained in the public file for a period of two years. Program logs submitted to the Commission must include a list of the names of donors indicated thereon.

(3) *For public service announcements.* An entry showing that a public service announcement (PSA) has been broadcast, together with the name of the organization or interest on whose behalf it is made. See Note 3 following this section for definition of a public service announcement.

(4) *For other announcements.* (i) An entry of the time that each required station identification announcement is made (call letters and licensed location, pursuant to § 73.1201).

(ii) An entry for each announcement presenting a political candidate showing the name and political affiliation of such candidate.

(iii) An entry for each announcement made pursuant to the local notice requirements of § 1.580 (pre-grant) and § 1.594 (designation of hearing), showing the time it was broadcast.

(iv) An entry showing that broadcast of taped, filmed or recorded material has been made in accordance with the provisions of § 73.1208.

(c) *Network programming.* A station broadcasting the programs of a network (see "network program," Note 1) which will supply it with all informtion as to such programs necessary for the "full week of operation" (FCC Form 342) need not log such data but shall record in its log the name of each network program broadcast, the time the program was broadcast (beginning and ending) and any non-network mattter broadcast required to be logged. The information supplied by the network for the "full week" which the station will use in its renewal application shall be retained with the program logs and associated with the log pages to which it relates.

(d) *Manually kept log.* Entries on a manually kept log may be made either at the time of or prior to broadcast. The employee responsible for keeping the log shall sign the log when starting duty and when going off duty and enter the time of each. If entries are pre-printed prior to broadcast and any deviation therefrom occurs in what was actually broadcast, an appropriate correction must be made on the log. When the employee keeping the log signs the log upon going off duty, that person attests to the fact that the log, with any corrections or addition made before he signed off, is an accurate representation of what was actually broadcast.

(e) *Automatically kept log.* (1) Entries on an automatically kept program log may be made by automatic logging instruments with sequential language printouts corresponding to manually kept log entries.

(2) An employee on duty shall be responsible for the automatic logging process and the keeping of the log. In the event of failure or malfunctioning of the automatic logging process, the person responsible for the log shall make the required entries in the log manually.

(3) The employee responsible shall sign the log, or a separate page to be affixed to the log, when starting duty and when going off duty and enter the time of each. The signature when going off duty constitutes a certification that, as to the automatic printout part of the log, the employee checked the automatic logging equipment periodically throughout the tour and that, to the best of his knowledge and belief, at no time during his tour did it fail or malfunction, unless otherwise noted above the signature; and that, as to any part of the log which was kept manually, with any corrections or additions made thereon before signing off duty, it was an accurate representation of what was actually broadcast.

(f) *Automatic maintenance of logging data.* (1) An employee on duty shall be responsible for any automatic maintenance of data and the keeping of the log. In the event of failure or malfunctioning of the said automatic process, the employee responsible for the log shall make the required entries in the log manually at that time.

(2) The employee responsible shall sign, on a separate page to be affixed to the logging data, when starting duty and when going off duty and enter the time of each. The signature when going off duty constitutes a certification that, as to the automatic maintenance of data equipment, the employee checked it periodically throughout the tour and that, to the best of his knowledge and belief, at no time during his tour did it fail or malfunction, unless otherwise noted above the signature; and that, as to any part of the log which was kept manually, with any corrections or additions made thereon before signing off duty, it was an accurate representation of what was actually broadcast.

(3) The licensee shall extract any required information from automatically maintained program logging data for days specified by the Commission or its duly authorized representative and submit it in written log form, together with the underlying recording, tape, or other means employed, within such time as the Commission may specify.

(g) *Information required.* The licensee, whether employing manual logging, automatic logging or automatic maintenance of logging data, or any combination thereof, must be able accurately to furnish the Commission with all information required to be logged.

(h) *Corrections.* (1) Program logs shall be changed or corrected only in the manner prescribed in § 73.581(c).

(2) If corrections or additions are made on the log after it has been signed, explanation must be made on the log or an attachment to it, dated and signed by either the person who kept the log, the

station program director or manager, or an officer of the licensee.

NOTE 1: Sources of programs are defined as follows:

A local program (L) is any program originated or produced by the station, employing live talent more than 50% of the time, and using the studios or other facilities of the station. A local program recorded or filmed by the station for later broadcast shall be classified as local. Programs primarily featuring phonograph records, syndicated or feature films or taped or transcribed programs, shall not be classified as local even though a station personality appears incidentally to introduce such material.

A record program (REC) (Radio only) is any program, not falling within the definition of "local" above, which utilizes phonograph records, electrical transcriptions or taped music, with or without commentary by a local announcer, or other station personnel.

A network program (N) is any program furnished to the station by a network (national, regional or special) such as Public Broadcasting System, National Public Radio, etc.

Other Programs (OTHER) are any programs not defined above, including, without limitation, syndicated film, taped or transcribed programs, and feature films.

NOTE 2: Types of educational programs are defined as follows:

Instructional (I) includes all programs designed to be utilized by any level of educational institution in the regular instructional program of the institution. In-school, in-service for teachers, and college credit courses are examples of instructional programs.

General Educational (GEN) is an educational program for which no formal credit is given.

Performing Arts (A) is a program, live or recorded, in which the performing aspect predominates such as drama or concert, opera, or dance.

News (NS) programs include reports dealing with the current local, national and international events, including weather and stock market reports; and commentary, analysis, or sports news when it is an integral part of a news program.

Public Affairs (PA) includes programs dealing with local, state, regional, national, or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, political programs, documentaries, mini-documentaries, panels, roundtables, vignettes, and extended coverage (whether live or recorded) of public events or proceedings, such as local council meetings, Congressional hearings, and the like.

Light Entertainment (LE) includes programs consisting of popular music or other light entertainment.

Other (O) includes all programs not falling within the definitions of Instructional, General Education, Performing Arts, News, Public Affairs or Light Entertainment. Sports programs should be reported as "Other."

NOTE 3: Definition of a public service announcement. A public service announcement is one which promotes programs, activities, or services of Federal, State, or local governments (e.g. recruiting, sales of bonds, etc.) or the programs, activities or services of nonprofit organizations (e.g., UGF, Red Cross, Blood Donations, etc.), and other announcements regarded as serving community interests, excluding time signals, routine weather announcements, and promotional announcements. See, however, § 73.503(d) with respect to the preclusion of announcements promoting the sale of a product or service.)

4. Section 73.670(a) is amended to read as follows:

§ 73.670 Program log.

(a) A program log shall be kept in accordance with the provisions of § 73.669, for each broadcast day, which, in this context, means from the station's sign-on to its sign-off, or from midnight to midnight for stations operating 24 hours a day. A station licensed or operating as noncommercial educational shall maintain its program log in accordance with the provisions of § 73.582 (Subpart C).

* * * * *

[FR Doc.76-38177 Filed 12-28-76;8:45 am]

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 604—CHARTER BUS OPERATIONS

Amendments

On April 1, 1976, the Urban Mass Transportation Administration (UMTA) published final regulations in the FEDERAL REGISTER (41 FR 14122) on charter bus operations by UMTA-assisted transit operators. The purpose of these amendments is to make clarifying changes and to correct inadvertent errors contained in those regulations.

The final paragraph of the preamble is amended to make clear that the charter regulations are final and not proposed regulations issued as a new Part 604 of 49 CFR Chapter VI.

Section 604.3 is amended to add a new definition of the term "Interested party" which was inadvertently left out of the regulations when they were published on April 1, 1976. Likewise, a new § 604.4 is added which establishes a public hearing requirement. Section 604.0 appeared in the index of the April 1, 1976 regulations but for some reason was not printed in the body of the regulations.

A considerable amount of concern has been voiced concerning § 604.15(a) of the regulations as they presently exist. That concern has been that UMTA has attempted to broaden the scope of section 3(f) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602) by applying the charter regulations to charter service inside an applicant's service area. This has never been UMTA's intention. Section 604.15 is therefore amended to make clear that the procedures required by that section apply only to applicants who engage in charter service outside of their urban area.

Finally, § 604.20(b) is amended to make clear that a grantee need develop certifications of costs, statements of proposed or existing charter bus operations and a cost allocation plan to be sent to private carriers only if that grantee intends to engage in charter service outside of its urban area.

In view of the technical nature of today's amendments, notice and comment concerning the amendments are unnecessary.

In consideration of the foregoing, (1) the new Part 604 of Chapter VI of Title 49 CFR, which was inadvertently issued on March 29, 1976, as a proposed new Part 604 of 49 CFR Chapter IV, is hereby reissued and republished by reference as final regulations, effective March 29, 1976; (2) Part 604 of Chapter VI of title 49 CFR is amended as follows, effective March 29, 1976.

Issued in Washington, D.C., December 22, 1976.

ROBERT E. PATRICELLI,
Urban Mass Transportation Administrator.

The final paragraph of the preamble to Part 604—Charter Bus Operations is amended to read as follows:

In consideration of the foregoing, a new Part 604 of 49 CFR Chapter VI is added as set forth below, effective March 29, 1976.

Issued on March 29, 1976.

2. Section 604.3 is amended to add, in appropriate alphabetical order, the following definition:

§ 604.3 Definitions.

* * * * *

"Interested party" means an individual, partnership, corporation, association or public or private organization that has a financial interest which is adversely affected by the act or acts of a grantee with respect to charter bus operations.

* * * * *

3. A new § 604.4 is added to read as follows:

§ 604.4 Public hearing requirement.

Each applicant who engages or wishes to engage in charter bus operations outside of its urban area shall afford an adequate opportunity for the public to consider such operations at the time the applicant conducts public hearings to consider the economic, social or environmental effects of its requested Federal financial assistance under section 3(d) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(d)).

4. Section 604.15 is amended in paragraph (a) to read as follows:

§ 604.15 Notice.

(a) Each applicant who engages or wishes to engage in charter bus operations outside of its urban area shall include the following in its application: * * *

* * * * *

5. Section 604.20 is amended in paragraph (b) to read as follows:

§ 604.20 Modification of prior agreements.

* * * * *

(b) The grantee, if it engages or wishes to engage in charter bus operations outside of its urban area, shall develop a certification of costs for its charter bus operations and send it with a

statement of its proposed or existing charter operations and a cost allocation plan to private charter bus operators who originate service in the grantee's urban area.

* * * * *

[FR Doc.76-38163 Filed 12-28-76;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1163, Amdt. 7]

PART 1033—CAR SERVICE

Missouri Pacific Railroad Co. Authorized To Operate Over Tracks of Union Pacific Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 21st day of December, 1976.

Upon further consideration of Service Order No. 1163 (38 FR 32259; 39 FR 18280, 41854; 40 FR 24005, 56443; 41 FR 22067, and 48343), and good cause appearing therefor:

It is ordered, That: Service Order No. 1163. Missouri Pacific Railroad Company authorized to operate over tracks of Union Pacific Railroad Company Service Order No. 1163 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1976.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17 (2). Interprets or applies Secs. 1(10–17), 15 (4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17 (2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, Members, Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38214 Filed 12-28-76;8:45 am]

[Service Order No. 1213-A]

PART 1033—CAR SERVICE

St. Louis-San Francisco Railway Co. Authorized To Operate Over Tracks of the Kansas City Southern Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 21st day of December, 1976.

Upon further consideration of Service Order No. 1213 (40 FR 21959, 53592; 41 FR 19325 and 50448), and good cause appearing therefor:

§ 1033.1213 [Deleted]

It is ordered, That: § 1033.1213 Service Order 1213-A, St. Louis-San Francisco Railway Company authorized to operate over tracks of the Kansas City Southern Railway Company be, and it is hereby, vacated and set aside.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17 (2). Interprets or applies Secs. 1(10–17), 15 (4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17 (2).)

It is further ordered, That this order shall become effective at 11:59 p.m., December 21, 1976; that copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38215 Filed 12-28-76;8:45 am]

[Ex Parte No. MC-37 (Sub-No. 26)]

COMMERCIAL ZONES AND TERMINAL AREAS

Miscellaneous Amendments

• *Purpose:* The purpose of this document is to notify the public that the Interstate Commerce Commission is modifying its regulations in order to expand commercial zones and motor carrier and freight forwarder terminal areas. •

By order served August 11, 1975, the Interstate Commerce Commission instituted the above-entitled proceeding in order to solicit public views regarding the possibility of modifying its regulations in order to expand commercial zones (49 CFR Part 1048) and motor carrier and freight forwarder terminal areas (49 CFR Part 1049). The Commission invited interested persons to submit written comments on this matter on or before October 14, 1975. Based upon a careful analysis of the representations received in response to the above request and upon an evaluation of other pertinent data, the Commission proposed certain rules and regulations in its Interim Report in this proceeding, served January 12, 1976. An additional 60 day period was set aside for written comments on the rules and regulations proposed in the Interim Report, which time was subsequently extended to April 14, 1976. Based upon an analysis of the representations filed by motor carriers, freight forwarders, shippers, and other interested parties, and an evaluation of economic, demographic, and environmental data, the Commission has promulgated the rules and regulations set forth below.

These rules (1) expand commercial zones and terminal areas pursuant to a new population-mileage formula, (2) specifically define certain zones which require greater limits than the proposed population-mileage boundaries, (3) restore the exemption to the New York, N.Y., Los Angeles, Calif., and St. Louis, Mo.-East St. Louis, Ill., commercial zones and to municipalities in Westchester and Nassau Counties, N.Y., and to certain described municipalities in New Jersey within 20 miles of New York, N.Y., (4) specifically define commercial zones of consolidated governments, (5) define the commercial zones of certain "twin cities," (6) eliminate existing confusing specific commercial zones descriptions, and (7) modify the existing rules for interpreting certificates and permits to comport with the changes made in (1) through (6) above. Generally, it has been found that the new commercial zones better reflect the economic and social development of American municipalities than the old zones, that they permit urban expansion, that they provide shippers located beyond the existing zones an equality of competition with shippers located within the existing zones, that they permit linehaul and existing exempt operations to become more efficient, and that any adverse effect to certificated short-haul carriers caused by added competition will be outweighed by the benefits of this action.

(Secs. 552, 553, and 559 of the Administrative Procedure Act (5 U.S.C. 552, 553, and 559) and sections 202, 203, 204, 207, 209, 402, 403, and 404 of the Interstate Commerce Act (49 U.S.C. 302, 303, 304, 307, 309, 1002, 1003, and 1004).)

By the Commission.

ROBERT L. OSWALD,
Secretary.

Accordingly, 49 CFR 1041, 1048, and 1049 are hereby modified in the following manner:

PART 1041—INTERPRETATION—CERTIFICATES AND PERMITS

1. Section 1041.21 is revised as follows:

§ 1041.21 Operating authority to serve particular unincorporated community, construction.

A certificate or permit issued to a motor carrier of property pursuant to the provisions of Part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.) or to any freight forwarder under Part IV of the act (49 U.S.C. 1001 et seq.) authorizing service at a particular unincorporated community having a post office of the same name shall be construed as authorizing service at all points which are within the United States and not beyond the territorial limits, if any, fixed in such certificate or permit on the authority granted, as follows: (a) All points within 3 miles of the post office in such unincorporated community if it has a population of less than 2,500; within 4 miles if it has a population of 2,500 but less than 25,000; and within 6 miles if it has a population of 25,000 or more, (b) at all points in any municipality any part of which is within the limits described in paragraph (a) of the section and (c) at points in any municipality wholly surrounded, or so surrounded except for a water boundary by any municipality included under the terms of paragraph (b) of this section. (49 Stat. 543, as amended, 544, as amended, 546, as amended; 49 U.S.C. 302, 303, 304).

§ 1041.22 [Deleted]

2. Section 1041.22 is deleted.

§ 1041.23 [Redesignated]

3. Section 1041.23 is redesignated as § 1041.22.

PART 1048—COMMERCIAL ZONES

§§ 1048.1 through 1048.41 [Deleted]

4. Sections 1048.1 through 1048.41 are deleted.

5. A new section 1048.1 is added.

§ 1048.1 Albany, N.Y.

The zone adjacent to, and commercially a part of Albany, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Albany, N.Y., itself.

(b) All points within a line drawn eight miles beyond the municipal limits of Albany.

(c) All points in that area more than eight miles beyond the municipal limits of Albany bounded by a line as follows: Beginning at that point on the western boundary of Cohoes, N.Y., where it crosses the line described in paragraph (b) of this section, thence along the western and northern boundary of Cohoes to the Mohawk River thence along such river to the northern boundary of the Town of Waterford thence along the northern and eastern boundaries of the Town of Waterford to the northern boundary of the City of Troy (all of which city is included under the next provision).

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Albany or any other municipality included under the terms of paragraph (d) of this section.

6. A new § 1048.2 is added.

§ 1048.2 Beaumont, Tex.

The zone adjacent to, and commercially a part of Beaumont, Tex., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act [49 U.S.C. 303(b)(8)] includes and is comprised of all points as follows:

(a) The municipality of Beaumont, Tex., itself;

(b) All points within a line drawn 8 miles beyond the municipal limits of Beaumont;

(c) Points in Jefferson County and Orange County, Tex.;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Beaumont or by any other municipality included under the terms of paragraph (d) of this section.

7. A new § 1048.3 is added.

§ 1048.3 Charleston, S.C.

The zone adjacent to, and commercially a part of Charleston, S.C., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Charleston, S.C., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Charleston;

(c) Those points in Charleston County, S.C., which are not within the areas described in paragraph (b) of this section; and those points in Berkley County, S.C., which are not within the areas described in paragraph (b) of this section, and which are west of South Carolina Highway 41.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Charleston or by any other municipality included under the terms of paragraph (d) of this section.

§ 1048.4 Charleston, W. Va.

The zone adjacent to, and commercially a part of Charleston, W. Va., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Charleston, W. Va., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Charleston;

(c) Those points in Kanawha County, W. Va., which are not within the area described in paragraph (b) of this section; and those points in Putman County, W. Va., south of West Virginia Highway 34;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Charleston or by any other municipality included under the terms of paragraph (d) of this section.

8. A new § 1048.5 is added.

§ 1048.5 Lake Charles, La.

The zone adjacent to, and commercially a part of Lake Charles, La., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulations under section 203(b)(8) of the Interstate Commerce Act (40 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Lake Charles, La., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Lake Charles;

(c) Those points in Calcasieu Parish, La., which are not within the area described in paragraph (b) of this section; and which are east of Louisiana Highway 27 (western section);

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of

Lake Charles or by any other municipality included under the terms of paragraph (d) of this section.

9. A new § 1048.6 is added.

§ 1048.6 Pittsburgh, Pa.

The zone adjacent to, and commercially a part of Pittsburgh within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Pittsburgh, Pa., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Pittsburgh;

(c) Those points in Allegheny County, Pa., which are not within the area described in paragraph (b) of this section;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Pittsburgh by any other municipality included under the terms of paragraph (d) of this section.

10. A new § 1048.7 is added.

§ 1048.7 Pueblo, Colo.

The zone adjacent to and commercially a part of Pueblo, Colo., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulations under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Pueblo, Colo., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Pueblo;

(c) Those points in Pueblo County, Colo., which are not within the area described in paragraph (b) of this section;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality included under the terms of paragraph (d) of this section.

11. A new § 1048.8 is added.

§ 1048.8 Ravenswood, W. Va.

The zone adjacent to, and commercially a part of Ravenswood, W. Va., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Ravenswood, W. Va., itself;

(b) All points within a line drawn 4 miles beyond the municipal limits of Ravenswood;

(c) Those points in Jackson County, W.Va., which are not within the area described in paragraph (b) of this section, and which are north of U.S. Highway 33.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Ravenswood or by any other municipality included under the terms of paragraph (d) of this section.

12. A new § 1048.9 is added.

§ 1048.9 Seattle, Wash.

The zone adjacent to, and commercially a part of Seattle, Wash., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Seattle, Wash., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Seattle;

(c) Those points in King County, Wash., which are not within the area described in paragraph (b) of this section, and which are west of a line beginning at the intersection of the line described in paragraph (b) of this section and Washington Highway 18, thence northerly along Washington Highway 18 to junction of Interstate Highway 90, thence westerly along Interstate Highway 90 to junction Washington Highway 203, thence northerly along Washington Highway 203 to the King County line; and those points in Snohomish County, Wash., which are not within the area described in paragraph (b) of this section and which are west of Washington Highway 9.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Seattle or by any other municipality including under the terms of paragraph (d) of this section.

13. A new § 1048.10 is added.

§ 1048.10 Washington, D.C.

The zone adjacent to, and commercially a part of Washington, D.C., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Washington, D.C., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Washington, D.C.

(c) Those points in Fairfax County, Va., which are not within the area described in paragraph (b) of this section, and Dulles International Airport;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Washington, D.C., or by any other municipality included under the terms of paragraph (d) of this section.

14. A new § 1048.11 is added.

§ 1048.11 Twin Cities.

For the purpose of determining commercial zones, utilizing the general population-mileage formula as set forth in § 1048.101, each of the following combinations of cities shall be considered as a single municipality (a) having a population equal to the sum of their combined populations, and (b) having boundaries comprised of their combined corporate limits, with the common portion thereof disregarded:

(1) Bluefield, Va.-W. Va.
(2) Bristol, Va.-Tenn.
(3) Davenport, Iowa, and Rock Island and Moline, Ill.
(4) Delmar, Del.-Md.
(5) Harrison, Ohio-West Harrison, Ind.
(6) Junction City, Ark.-La.
(7) Kansas City, Mo.-Kansas City, Kans.
(8) Minneapolis-St. Paul, Minn.
(9) St. Louis, Mo.-East St. Louis, Ill.
(10) Texarkana, Ark.-Tex.
(11) Texhoma, Tex.-Okla.
(12) Union City, Ind.-Ohio.

15. A new § 1048.12 is added.

§ 1048.12 Consolidated Governments.

The zone adjacent to and commercially a part of a consolidated government within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) All points within the boundaries of the consolidated government.

(b) All points beyond the boundaries of the consolidated government which were at any time within the commercial zone of the formerly independent core municipality.

(c) When the present population of the formerly independent core municipality is identifiable, all points beyond the boundaries of the consolidated government which are within the territory determined by the most recent population-mileage formula measured from the limits of the formerly independent core municipality.

(d) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the consolidated government or by any other municipality included under the terms of paragraphs (a), (b), or (c) of this section.

16. A new § 1048.13 is added.

§ 1048.13 New Jersey Area in which ex-maritime and ex-rail traffic will share in New York, N.Y., commercial zone.

The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, is hereby expressly extended to transportation which is performed wholly between points in New Jersey south of Interstate 495 and New Jersey Highway 3, east of the Garden State Parkway, and north of the Raritan River, on the one hand, and, on the other, points in the New York, N.Y., commercial zone as determined by application of § 1048.101, restricted to shipments that have had a prior or will have subsequent movement by rail or by water.

17. A new § 1048.15 is added.

§ 1048.15 Los Angeles, Calif., Harbor Zone.

The Los Angeles, Calif., Harbor Zone shall include all points within a line beginning at the Pacific Ocean and extending easterly along Rosencrans Avenue to its point of intersection with the western municipal limits of Compton, thence in an easterly direction along the northern municipal limits of Compton to the point where the eastern municipal limits of Compton and Rosencrans Avenue intersect, thence along Rosencrans Avenue in an easterly direction to its intersection with California Highway 19, thence extending southerly along California Highway 19 to its intersection with California Highway 91, thence easterly along California Highway 91 to the Los Angeles-Orange County line, thence south along said County line to the Pacific Ocean.

§ 1048.42 [Redesignated]

18. Section 1048.42 is redesignated as § 1048.14.

19. Section 1048.101(c) is amended as follows:

§ 1048.101 Commercial zones determined generally, with exceptions.

* * * * *

(c) * * *

(1) When the base municipality has a population less than 2,500 all unincorporated areas within 3 miles of its corporate limits and all of any other municipality any part of which is within 3 miles of the corporate limits of the base municipality.

(2) When the base municipality has a population of 2,500 but less than 25,000 all unincorporated areas within 4 miles of its corporate limits and all of any other municipality any part of which is within 4 miles of the corporate limits of the base muncipality.

(3) When the base municipality has a population of 25,000 but less than 100,000 all unincorporated areas within 6 miles of its corporate limits and all of any other municipality any part of which is within 6 miles of the corporate limits of the base municipality.

(4) When the base municipality has a population of 100,000 but less than 200,000 all unincorporated areas within 8 miles of its corporate limits and all of any other municipality any part of which is within 8 miles of the corporate limits of the base municipality.

(5) When the base municipality has a population of 200,000 but less than 500,000 all unincorporated areas within 10 miles of its corporate limits and all of any other municipality any part of which is within 10 miles of the corporate limits of the base municipality.

(6) When the base municipality has a population of 500,000 but less than 1 million, all unincorporated areas within 15 miles of its corporate limits and all of any other municipality any part of which is within 15 miles of the corporate limits of the base municipality.

(7) When the base municipality has a population of 1 million or more, all unincorporated areas within 20 miles of its corporate limits and all of any other municipality any part of which is within 20 miles of the corporate limits of the base municipality, and

* * * * *

PART 1049—TERMINAL AREAS

20. Section 1049.2(a) is revised as follows:

§ 1049.2 Terminal areas of motor carriers and freight forwarders at unincorporated communities served.

* * * (a) all points in the United States which are located within the limits of the operating authority of the motor carrier of property or freight forwarder involved, and within 3 miles of the post office at such authorized unincorporated point if it has a population less than 2,500, within 4 miles if it has a population of 2,500 but less than 25,000, within 6 miles if it has a population of 25,000 or more; * * *

[FR Doc.76-38216 Filed 12-28-76;8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

[Amdt. 6]

PART 16—LIMITATION ON IMPORTS OF MEAT

Section 204 Import Regulations; Transshipment Restrictions With Respect to Australian and New Zealand Meat Entered During Calendar Year 1977

The regulations set forth in this subpart are amended to assist in carrying out agreements negotiated by the United States with governments of Australia and New Zealand pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), with respect to the entry into the customs territory of the United States of certain meat during the calendar year 1977.

These agreements cover meat of Australian or New Zealand origin described in items 106.10 and 106.20 of the Tariff Schedules of the United States (TSUS) and meat which would fall within such description but for processing in Foreign-Trade Zones, territories or possessions of the United States prior to entry, or withdrawal from warehouse, for consumption in the United States customs territory.

The regulation is issued with the concurrence of the Secretary of State and the Special Representative for Trade Negotiations.

The regulation limits the entry into the customs territory of the United States of meat of Australian or New Zealand origin covered by TSUS items 106.10 and 106.20 to such meat exported from these countries as direct shipments or on through bills of lading to the United States. It also provides that meat which, but for processing in foreign trade zones, territories or possessions of the United States prior to entry or withdrawal from warehouse for consumption in the United States, would be considered such meat of Australian or New Zealand origin may not be entered into the customs territory of the United States unless exported as direct shipments or on through bills of lading to the United States from the foreign trade zone, territory or possession of the United States in which processed. The regulation requires the presentation at the time of entry into the customs territory of the United States of documentation to establish (1) that such conditions have been met and (2) the country from which the meat was exported in the form in which it would be classified TSUS 106.10 or 106.20.

It is essential that the action taken herewith be made effective January 1, 1977, when the agreements entered into by the United States with Australia and New Zealand become effective. Since the action taken herewith involves foreign affairs functions of the United States, this regulation falls within the foreign affairs exception to the notice and effective date provisions of 5 U.S.C. 553.

The subpart, Section 204 Import Regulations of Part 16, Subtitle A of Title 7 (40 FR 31227), is amended as follows:

Section 16.3, *Transshipment restrictions,* is amended to read as follows:

§ 16.3 Transshipment restrictions.

During calendar year 1977:

(a) No meat of Australian or New Zealand origin may be entered or withdrawn from warehouse for consumption in the United States unless exported into the customs territory of the United States as direct shipments or on a through bill of lading from the country of origin.

(b) No meat, which but for processing in Foreign-Trade Zones, territories or possessions of the United States would fall within the definition of meat in § 16.2 (a) and would be treated as being of Australian or New Zealand origin, may be entered or withdrawn from warehouse for consumption in the United States unless exported into the customs territory of the United States as direct shipments or on a through bill of lading from the Foreign-Trade Zone, territory or possession of the United States in which it was processed.

(c) Articles subject to paragraphs (a) and (b) above may not be entered into the customs territory of the United States unless there is presented at time of entry documentation establishing (1) that there has been compliance with the applicable conditions of this section and (2) the country from which the article was exported in the form in which it would fall within the definition of meat in § 16.2(a).

EFFECTIVE DATE. The regulation contained in this amendment shall become effective January 1, 1977.

(Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854); E.O. 11539, 35 F.R. 10733)

Issued at Washington, D.C. this 28th day of December, 1976.

RICHARD E. BELL,
Acting Secretary of Agriculture.

[FR Doc.76-38402 Filed 12-28-76;10:02 am]

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE DEPARTMENT OF AGRICULTURE

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Overtime Work at Border Ports, Seaports, and Airports

• Purpose: The purpose of this document is to amend 7 CFR 354.1 relating to charges for overtime work performed at airports outside of the regularly established hours of service.•

Agricultural quarantine inspectors of the U.S. Department of Agriculture are charged with performing inspection duties relating to imports and exports at border ports, seaports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable from those requesting the services. The following document amends § 354.1, Overtime Work at Border Ports, Seaports, and Airports, by changing the overtime rate to be charged owners and operators of aircraft for work performed outside of the regularly established hours of service. One of the sections of the 1976 Amendments of the Airport and Airways Development Act provides that any required quarantine inspection service for operation of aircraft at airports during regularly established hours of service on Sundays and holidays will be performed without reimbursement from the owners or operators of the aircraft to the same extent such service had been performed during regularly established hours of service during weekdays, and by having any administrative overhead costs associated with such services at airports, also to be performed without reimbursement. These limitations of charges to owners and operators of aircraft for government inspection at airports are made in accordance with the Airport and Airways Development Act Amendments of 1976.

Pursuant to the authority conferred by the Act of August 28, 1950, (64 Stat. 561; 7 U.S.C. 2260) and the Airport and Airways Development Act Amendments of July 12, 1976, (90 Stat. 882; 48 U.S.C. 1741), § 354.1 of Part 354 Title 7, Code of Federal Regulations, the first sentence of § 354.1(a) is amended as set forth below:

§ 354.1 Overtime work at border ports, seaports, and airports.

(a) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal products, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of the Plant Protection and Quarantine Programs, on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine Programs inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during such overtime, or Sunday or holiday period, and shall pay the Government therefor at the rate of $21.32 per man-hour per employee on a Sunday and at the rate of $14.60 per man-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners and operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $17.52, and for work performed outside of the regularly established hours of service for holiday or any other period will be $10.84 per hour, which charges exclude administrative overhead costs.

* * * * *

(64 Stat. 561 (7 U.S.C. 2260); (Sec. 15 of Pub. L. 94-353, 90 Stat. 882) (49 U.S.C. 1741).)

Effective date: The foregoing amendment shall become effective January 1, 1977.

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. It is to the benefit of the public that this amendment be made effective at the earliest practicable date. Accordingly, pursuant to the administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the FEDERAL REGISTER.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., this 23rd day of December, 1976.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc.76-38231 Filed 12-28-76;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COST ACCOUNTING STANDARDS BOARD

[4 CFR Part 331]

CONTRACT COVERAGE

Proposed Amendment

Notice is hereby given that the Cost Accounting Standards Board proposes to amend Part 331, Contract Coverage, of its regulations.

A relevant Federal agency has urged the Board to expand the provision set out in the third sentence in § 331.70(b) of the Board's regulations. That sentence now reads as follows:

> Subsequently, if the contractor fails during contract performance to follow his disclosed practices or to comply with applicable Cost Accounting Standards, any increased cost to the United States by reason of that failure must be measured by the difference between the cost estimates used in negotiations and the cost estimates that would have been used had the contractor proposed on the basis of the practices actually used during contract performance.

The agency points out that in some cases the parties to a contract may not have agreed on the cost estimates used during negotiation of the contract, in which case it might be difficult to make the comparison required by the sentence quoted above. The agency states that in many cases the determination of increased costs paid by the United States can be more easily made through the use of estimates to complete the remaining work under the contract. The agency would like to have the option to use the estimates-to-complete approach where use of it is appropriate, and to retain the original-negotiation-data approach where use of it is appropriate.

The Board believes that it should in appropriate cases be responsive to the needs of procurement agencies which must administer the Board's Standards, rules and regulations, and the Board has long urged such agencies to recommend changes in the Board's materials which the agencies believe to be desirable. Consequently, the Board proposes an amendment of § 331.70(b), as follows:

Amend § 331.70(b) by inserting immediately following the third sentence of that paragraph the following sentence:

§ 331.70 Interpretation.

* * * * *

(b) * * * If however, negotiations were not based on cost estimates, or if the cost estimates which were used are not readily determinable by the procuring agency, any increased costs to the United States by reason of that failure may be measured by the difference between the costs that would have been allocated if the failure had not arisen and the costs that will be allocated under the practice followed or to be followed by the contractor. * * *

The Board solicits comments on the proposed amendment to its regulations. Interested persons should submit written materials to assist the Board in its consideration of this proposal. Views should be submitted to the Cost Accounting Standards Board, 441 G Street, N. W., Washington, D.C. 20548. To be given consideration by the Board in its determination relative to the adoption of the proposed amendment, written submissions must be made to arrive no later than February 28, 1977. All written submissions made pursuant to this notice will be made available to the public for inspection during the Board's regular business hours.

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc.76-38108 Filed 12-28-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Part 92]

RESTRICTIONS ON IMPORTATION OF BIRDS

Extension of Time for Submission of Comments

This notice extends the time period for submitting written comments, data, views and other information with respect to proposed restrictions on importation of birds into the United States, as published in the FEDERAL REGISTER November 12, 1976 (41 FR 50000), from December 14, 1976 to February 12, 1977. Certain representatives of importers of birds have requested that the comment period be extended an additional 60 days in order to give them adequate time to obtain relevant data and information and to develop sound views and comments.

Since the Department is interested in receiving meaningful views and comments, these circumstances are considered ample justification for an extension of the time period originally allotted for submitting views and comments.

Therefore, written comments and other material relating to this matter may be submitted to the Deputy Administrator, Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, Federal Building, Hyattsville, Maryland 20782, on or before February 12, 1977.

Done at Washington, D.C., this 23rd day of December 1976.

J. M. HEJL,
Deputy Administrator,
Veterinary Services.

[FR Doc.76-38239 Filed 12-28-76;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 226]

[Docket No. R-0070; Reg. Z]

PART 226—TRUTH IN LENDING

Proposed Board Interpretations of Regulation Z; Sample Lease Disclosure Statements

The Board is publishing for comment three proposed Board interpretations of Regulation Z in the form of sample lease disclosure statements. These sample statements are being proposed to facilitate lessor compliance with the Consumer Leasing Act of 1976 (Pub. L. 94-240) and amendments to Regulation Z issued by the Board on October 8, 1976. (41 FR 45537, October 15, 1976) which implemented the Act.

The Board believes that the proposed interpretations will be, when properly used, adequate disclosure statements of lease terms as required by Regulation Z. When finalized, their proper use will protect lessors from liability for violations of the Consumer Leasing Act, as provided by 15 U.S.C. 1640(f). The Board wishes to emphasize, however, that these forms are not the exclusive format by which compliance with the Regulation may be achieved. Lessors remain free to design and implement other forms and sequences of disclosure.

There are disclosure statements for three types of leasing transactions: (1) Open-end or finance vehicle leasing, (2) Closed-end or net vehicle leasing and (3) Furniture leasing. The Board solicits comment on whether these three forms are sufficient to encompass most types of consumer leasing.

Detailed instructions for each form are included in the proposed interpretations. These instructions are an integral part of the forms and were designed to provide guidance to those persons actually completing them. The Board asks that comments be directed to the adequacy and intelligibility of the instructions.

The Board has completed a form for each type of leasing transaction and the completed forms accompany the proposed interpretations. These completed forms are not part of the interpretations, however, and are provided for informational purposes only.

The forms are designed as disclosure statements and not as lease contracts. The Board has chosen to propose these interpretations as disclosure statements rather than as contracts in order to avoid imposition of contract terms upon the lease parties. Lessors who wish to provide disclosures on the contract document rather than on a separate disclosure statement may incorporate the disclosure into a contract as permitted by § 226.15(a)(1). Further, the forms have a skeletal design, which will permit lessors to provide specific disclosure language. The Board is concerned that lessors have the greatest amount of flexibility in structuring their lease agreements and disclosures. Similarly, the design of the forms is such that lessors may provide any permissible language for the specific disclosures. An exception to this skeletal format is the language of Item 14 in Interpretation § 226.1501 (the open-end vehicle lease statement) which contains specified language for the end-term liability disclosures required by § 226.15(b)(ii) and (iii).

The disclosures must be made only if they are applicable to the lessor's particular lease. Any inapplicable disclosure may be deleted from the form. The Board has provided brackets around disclosures which are alternative in nature, e.g., the disclosures concerning purchase options.

To insure compliance with the form and protection from liability, lessors should not alter the wording of the statements, except in those instances (e.g., initial payments, total of other charges) where provision has been made for deletion or substitution of terms. The numbering system used in the statements may also be deleted.

Use of the instructions is not required; they may be disregarded by lessors or other instructions may be substituted, provided they are not used to circumvent the Regulation in any manner.

The open end vehicle lease disclosure statement is reproduced on two pages in the FEDERAL REGISTER because of page size limitations. It can be reproduced on a single side of a legal size page.

The Board invites comment on all facets of the proposed interpretations and particularly on those issues indicated in the previous discussion and below:

1. The proposed skeletal design of the forms and their issuance as disclosure statements rather than as lease contracts.

2. The general style and format of the forms and the manner in which they could be improved.

3. The use of simplified language throughout the forms.

4. Whether there are unnecessary disclosures in the form and whether information which is not required should be added in order to render the forms more understandable to consumers.

5. Whether there are problems peculiar to each type of consumer leasing encompassed by the forms which are not adequately addressed in the proposed interpretations.

6. Whether the disclosure language of Item 14 in Interpretation § 226.1501 is an adequate and readily understandable statement of the limitations on the lessor's end-term liability.

The deadline for receipt of written comments is January 21, 1977. Comments should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments should include a reference to Docket No. R-0070.

Pursuant to the authority granted in 15 U.S.C. 1604 (1968) the Board proposes to issue the following interpretations of 12 CFR Part 226:

SECTION 226.1501---OPEN-END OR FINANCE
VEHICLE LEASE DISCLOSURE STATEMENT

DATE_____

1. LESSOR(S) LESSEE(S)

2. Description of leased property

YEAR	MAKE	MODEL	BODY MAKE	SERIAL #

3. Initial Charges, consisting of: (Actual dollar amounts may, but need not be itemized.)
/__/Advance Payment /__/Refundable Security Deposit /__/Trade-in Allowance
/__/Delivery Charge /__/(Other-must be identified) $_____

4. The term of this lease is _____. (e.g., # of weeks, months, quarters) The first periodic payment is due on _____; subsequent payments on the _____ of each _____ thereafter.

5. Amount of each periodic payment:_____(May include charges for taxes and insurance.)

6. Total of Periodic Payments: _____ X _____ = _____ $_____

7. Total of Other Charges Payable to Lessor: /__/Disposition Charge $_____
/__/Maintenance $_____ /__/(Other-must be itemized) $_____

8. Official Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $_____

9. Insurance
The following types and amounts of insurance are required in connection with this lease: (e.g., physical damage, personal liability, uninsured motorist insurance).
/__/We (lessor) will provide the insurance coverage quoted above for a premium cost of $_____ payable _____
/__/You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

10. Estimated value of the vehicle at the end of the lease term: (Your liability for this sum is limited. See Item 14.) $_____

11. Total lease obligation: Items 3, 6 and 10 but excluding any refundable security deposit and insurance premiums. $_____
12. Initial Value of Vehicle: $_____
13. Difference: (Item 11 less Item 12.) $_____

14. End of Term Liability
Federal law requires us to tell you the following:
(a) The estimated value of the vehicle stated in Item 10 is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the estimated value, you will have no further liability under this lease [and are entitled to a credit or refund of any surplus].
If the actual value of the vehicle is less than its estimated value, you will be liable for any difference up to $_____ (3 times Item 3). For any difference in excess of that amount, you will be liable only if:

1. Excessive use or damage represented more than normal wear and tear and therefore resulted in an unusually low value at the end of the term.

2. You voluntarily agree with us after the end of the lease term to make a higher payment.

3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment. Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle.

Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and tear, we will pay your reasonable attorney's fees.

(b) If you disagree with the actual value assigned to the vehicle, you may obtain, at your own expense, a professional appraisal of the value of the leased vehicle which could be realized at sale by an independent third party agreeable to both of us. The appraised value shall then be used as the actual value.

15. Early Termination and Default

(a) [Prior to the end of the lease term you may terminate this lease under the following conditions: _____]
[The charge for such early termination is* _____]

(b) [Prior to the end of the lease term we may terminate this lease under the following conditions: [Occurrence of default (specify)_____]
[(Specify any other conditions)_____]
[Upon such termination we shall be entitled to the following charge(s) for [default* _____]
[(Specify other charges)* _____]]

(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as upon lease expiration (Item 14(c)).

16. Security Interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:_____

17. Late Payments*

The charge for late payments is _____

18 Lessee's Option to Purchase

[You have an option to purchase the leased vehicle at the following times:_____

[If at the end of the term the price will be $_____]

[If prior to end of the term the price will be $*_____]

[Lessee has no option to purchase the leased vehicle.]

19. Warranties

The leased vehicle is subject to the following express warranties: (Identify any manufacturer's or lessor's warranties available to the lessee.)_____

20. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle:_____]

[We are responsible for the following maintenance and servicing of the leased vehicle:_____]

21 Standards for wear and use

The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: (e.g., No more than _____ miles during the lease term, compliance with manufacturer's warranty maintenance schedule.)_____

* May use amount or method of determining the amount.

INSTRUCTIONS FOR COMPLETION OF § 226.1501—OPEN-END OR FINANCE VEHICLE LEASE DISCLOSURE STATEMENT

GENERAL INSTRUCTIONS

Completion of this form may be facilitated by reference to the following instructions. Any question as to the permissibility or accuracy of a specific disclosure may be answered by reference to Regulation Z, 12 CFR Part 226.

Information which is required to be disclosed may be estimated if the information is unknown or unavailable, provided that the information is clearly identified as an estimate and the estimate is based on the best information available and is reasonable (§ 226.6(f)).

Any inapplicable disclosures may be deleted.

All numerical amounts must be stated in figures and shall be printed in not less than the equivalent of ten point type or elite typewritten numerals or legibly handwritten (§ 226.6(a)).

Certain numerical items may be disclosed by giving the amount or the method of determining the amount. These items are identified by an asterisk.

SPECIFIC INSTRUCTIONS

Item 1. The disclosures must be made on a written dated statement. All lessors and lessees must be identified by name (§ 226.15 (a)). If, for example, one person arranges the lease and another person enters into the lease with the lessee, both must be identified as lessors (§ 226.2 (n) and (oo)). An address may augment the identification but need not be supplied as part of the disclosure form.

Item 2. This disclosure provides a brief description of the leased property (§ 226.15 (b)(1)). Lessors may include a more detailed description including, for example, special accessories. There is no requirement that a serial number for the vehicle be disclosed.

Item 3. This disclosure shows the total amount of any initial payment the customer must make when the lease is entered into (§ 226.15(b)(2)). The components of the initial payment *must* be identified and *may*, at the lessor's option, be itemized with respect to dollar amount. The checklist is provided to aid in the identification.

The initial payment does not include any periodic payment disclosed under Item 5 even though a periodic payment may be due prior to delivery of the leased property.

Items 4, 5 and 6. When completed, these combined items disclose the term of the lease, the number, amount and due dates of each periodic payment, and the total amount of all periodic payments to be made under the lease (§ 226.15(b)(3)). The amount shown for each periodic payment should include any incidental charges for taxes, insurance or both, if those charges are payable as part of the periodic payment.

Item 7. This item discloses other charges payable to the lessor (§ 226.15(b)(15)). This excludes charges for official fees, taxes, insurance and charges disclosed under other items.

Item 8. This item discloses the total amount to be paid by the lessee during the lease term for taxes and other official fees (§ 226.15(b)(4)).

Item 9. This item requires disclosure of the types and amounts of insurance coverage, with their costs, if the insurance is provided by the lessor (§ 226.15(b)(6)(i)). In the alternative, the types and amounts of coverage required of the lessee must be disclosed (§ 226.15(b)(6)(ii)).

Item 10. This item provides for disclosure of the estimated value of the leased vehicle at the end of the term, an element of the "total lease obligation" (§ 226.15(b)(15)(i)). The reference to item 14 is to call the lessee's attention to the qualifying disclosures in that item required by §§ 226.15(b)(14) and 226.15(b)(15)(ii) and (iii).

Item 11, 12 and 13. These items provide for disclosure of the difference between the total lease obligation and the property's value at the inception of the lease. The definition of "total lease obligation" (§ 226.2 (rr)) is the sum of any initial charges (Item 3), the total of periodic payments (Item 6) and the estimated value of the property at the end of the term (Item 10), excluding any refundable security deposit and insurance premiums contained in the periodic payments. The Board has indicated it does not consider these latter amounts properly includable in the total lease obligation. 41 *Fed. Reg.* 45537.

Item 14. This item provides disclosures with respect to the lessee's liability at the end of the lease term. The bracketed phrase in the second sentence is appropriate only where the lessee will be given any surplus resulting from the disposition. Item 14(a) implements, in lay language, the disclosures required by § 226.15(b)(15)(ii) and (iii). Item 14(b) discloses the lessee's right to an independent appraisal required by § 226.15 (b)(14).

Item 15. When completed, this item discloses the conditions under which the lessee and lessor may terminate the lease prior to the end of the lease term. It also discloses the amount or method of determining the amount of the charge which the lessee must pay for early termination (§ 226.15(b)(12)). This item also discloses the amount or method of determining the amount of any default charges (§ 226.15(b)(10)).

Item 16. This disclosure of the security taken must include, in the space provided, a brief identification of the types of security interest and an identification of the property covered by each (§ 226.15(b)(9)).

Item 17. This disclosure, when completed, indicates the amount or method of determining the amount of any charges for late payment.

Item 18. This item provides alternative disclosures covering the several options a lessor may offer to a lessee to purchase the leased property. A lessor should use the disclosure applicable to the lease plan used. For example, if no option to purchase is offered, only the last sentence of the item need be used. If the lessor offers an option to purchase, the times at which it may be exercised must be supplied. The price must be disclosed for an option exercised at the end of the term and the price or method of computing the price for an option exercised during the lease term must be supplied (§ 226.15(b)(11)).

Item 19. This item discloses all express warranties on the leased property made by the manufacturer or lessor and available to the lessee. A brief identification of the warranty must be supplied. A reference to the standard manufacturer's warranty, for example, would suffice.

Item 20. This item provides for disclosure of the maintenance and servicing responsibilities (§ 226.15(b)(8)). These responsibilities may be allocated either to the lessor or to the lessee, or may be divided between them.

Item 21. When completed, this item discloses reasonable standards for wear and use established by the lessor. The lessor is permitted but not required to set such standards. Therefore, the disclosure may be omitted by lessors who do not set standards for wear and use (§) 226.15(b)(8)).

SECTION 226.1301---OPEN-END OR FINANCE
VEHICLE LEASE DISCLOSURE STATEMENT

DATE April 15, 1977

1. LESSOR(S)

Custom Auto Leasing

LESSEE(S)

Mary S. Roe

2. Description of leased property

YEAR	MAKE	MODEL	BODY TYPE	SERIAL #
1977	Ford	LTD	4 Door Sedan	8C40716001

3. Initial Charges, consisting of: (Actual dollar amounts may, but need not be itemized.)
/X/Advance Payment /__/Refundable Security Deposit /__/Trade-in Allowance
/X/Delivery Charge /X/Sales Tax on Advance Payment — $ 580.00

4. The term of this lease is 24 months. (e.g., # of weeks, months, quarters) The first periodic payment is due on 4/15/77; subsequent payments on the 5th of each month thereafter.
5. Amount of each periodic payment: $146.50 Includes tax of $ 8.29 on a monthly payment of $138.21
6. Total of Periodic Payments: $146.50 x 24 = $3,516.00 — $ 3,516.00

7. Total of Other Charges Payable to Lessor: /X/Disposition Charge $ 50.00
/__/Maintenance-$ /__/(Other-must be itemized) — $ 50.00

8. Official Fees and Taxes**
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. — $ 338.96

9. Insurance
The following types and amounts of insurance are required in connection with this lease: Comprehensive, $100,000/300,000; Bodily injury, $25,000; Property damage, $100 deductible; Collision comprehensive, Actual value,
/X/We (lessor) will provide the insurance coverage quoted above for a premium cost of $ 336.00 ** payable annually
/__/You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

10. Estimated value of the vehicle at the end of the lease term: (Your liability for this sum is limited. See Item 14.) — $ 3,000.00

11. Total lease obligation: Items 3, 6 and 10 but excluding any refundable security deposit and insurance premiums. — $ 7,096.00
12. Initial Value of Vehicle: — $ 5,950.00
13. Difference: (Item 11 less Item 12.) — $ 1,146.00

14. End of Term Liability

Federal law requires us to tell you the following:

(a) The estimated value of the vehicle stated in Item 10 is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the estimated value, you will have no further liability under this lease [and are entitled to a credit or refund of any surplus].

If the actual value of the vehicle is less than its estimated value, you will be liable for any difference up to $ 439.50 (3 times Item 3). For any difference in excess of that amount, you will be liable only if:

1. Excessive use or damage represented more than normal wear and tear and therefore resulted in an unusually low value at the end of the term.

2. You voluntarily agree with us after the end of the lease term to make a higher payment.

3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment. Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle.

Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and tear, we will pay your reasonable attorney's fees.

(b) If you disagree with the actual value assigned to the vehicle, you may obtain, at your own expense, a professional appraisal of the value of the leased vehicle [which could be realized at sale] by an independent third party agreeable to both of us. The appraised value shall then be used as the actual value.

15. Early Termination and Default

(a) Prior to the end of the lease term you may terminate this lease under the following conditions: At any time after 6 months from the date of this agreement, on 30 days written notice, by surrending the leased vehicle to us at our place of business.
The charge for such early termination is $50.00 plus 50% of the remainder of periodic payments.

(b) [Prior to the end of the lease term we may terminate this lease under the following conditions: Occurrence of default, your failure to fulfill any obligation under the lease, including failure to make any payment; the institution of insolvency proceedings by or against you.
(Specify any other conditions)

Upon such termination we shall be entitled to the following charge(s) for default: $50.00 plus all costs of retaking possession of the leased vehicle plus 50% of any remaining periodic payments.

(Specify other charges)

(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as upon lease expiration (Item 14(c)).

16. Security Interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: A security interest in the leased vehicle described in the security agreement attached to the lease contract.

17. Late Payments*

The charge for late payments is 3% per month on any amounts due and unpaid after 5 days.

18. Lessee's Option to Purchase

[You have an option to purchase the leased vehicle at the following times: At any time after 12 months from the date of the lease contract.

[If at the end of the term the price will be $ 3,000.
[If prior to end of the term the price will be $* the estimated value of the vehicle at the end of the term plus 70% of all periodic payments unaccrued at the date the option is excercised.

[Lessee has no option to purchase the leased vehicle.]

19. Warranties

The leased vehicle is subject to the following express warranties: The vehicle is subject to the Ford new card warranty which accompanies the vehicle. Lessor makes no warranties, express or implied, of merchantability or fitness, with respect to the leased vehicle.

20. Maintenance

You are responsible for the following maintenance and servicing of the leased vehicle: All normal operating expenses, including gasoline, oil and lubrication; all maintenance and repairs necessary to maintain the leased vehicle in conformity with the standards for wear and use.

[We are responsible for the following maintenance and servicing of the leased vehicle:

21. Standards for wear and use

The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: No more than $50,000 miles during the lease term; compliance with manufacturer's warranty maintenance schedule; no body or interior damage with an aggregate repair cost in excess of $100.00.

* May use amount or method of determining the amount.
** Estimate

Section 226.1502---CLOSED-END OR NET
VEHICLE LEASE DISCLOSURE STATEMENT

Date _____

1. LESSOR(S) LESSEE(S)

_____ _____

_____ _____

2. Description of leased property

YEAR	MAKE	MODEL	BODY TYPE	SERIAL #

3. Initial Charges, consisting of: (Actual dollar amounts may, but need not be itemized.)
/__/Advance Payment /__/Refundable Security Deposit /__/Trade-in Allowance
/__/Delivery Charge /__/(Other-must be identified) $ _____

4. The term of this lease is _____ (e.g., # of weeks, months, quarters). The first periodic payment is due on _____; subsequent payments on the _____ of each _____ thereafter.
5. Amount of each periodic payment: _____ (May include charges for taxes and insurance.)
6. Total of Periodic Payments: _____ X _____ = _____ $ _____

7. Total of Other Charges Payable to Lessor: /__/Disposition Charge $ _____
/__/Maintenance $ _____ /__/(Other-must be itemized) $ _____

8. Official Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $ _____

9. Insurance
The following types and amounts of insurance are required in connection with this lease: (e.g., physical damage, personal liability, uninsured motorist insurance).
/__/We (lessor) will provide the insurance coverage quoted above for a premium cost of $ _____ payable _____
/__/You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

10. Early Termination and Default
(a) [Prior to the end of the lease term you may terminate this lease under the following conditions: _____.]
[The charge for such early termination is*[_____
_____.]

(b) [Prior to the end of the lease term we may terminate this lease under the following conditions: [Occurrence of default (specify) _____.]
[(Specify any other conditions) _____.]
[Upon such termination we shall be entitled to the following charge(s) for [default* _____.]
[(Specify other charges)* _____.]

11. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____

12. Late Payments*
The charge for late payments is _____

13. Lessee's Option to Purchase
[You have an option to purchase the leased vehicle at the following times: _____
[If at the end of the term the price will be $ _____.]
[If prior to end of the term the price will be $* _____.]
[Lessee has no option to purchase the leased vehicle.]

14. Warranties
The leased vehicle is subject to the following express warranties: (Identify any manufacturer's or lessor's warranties available to the lessee.) _____

15. Maintenance
[You are responsible for the following maintenance and servicing of the leased vehicle: _____.]
[We are responsible for the following maintenance and servicing of the leased vehicle: _____.]

16. Standards for wear and use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: (e.g., No more than _____ miles during the lease term, compliance with manufacturer's warranty maintenance schedule.) _____

*May use amount or method of determining the amount.

INSTRUCTIONS FOR COMPLETION OF § 226.1502—CLOSED-END OR NET VEHICLE LEASE DISCLOSURE STATEMENT

GENERAL INSTRUCTIONS

Completion of this form may be facilitated by reference to the following instructions. Any question as to the permissibility or accuracy of a specific disclosure may be answered by reference to Regulation Z, 12 CFR Part 226.

Information which is required to be disclosed may be estimated if the information is unknown or unavailable, provided that the information is clearly identified as an estimate and the estimate is based on the best information available and is reasonable (§ 226.6(f)).

Any inapplicable disclosures may be deleted.

All numerical amounts must be stated in figures and shall be printed in not less than the equivalent of ten point type or elite typewritten numerals or legibly handwritten (§ 226.6(a)).

Certain numerical items may be disclosed by giving the amount or the method of determining the amount. These items are identified by an asterisk.

SPECIFIC INSTRUCTIONS

Item 1. The disclosures must be made on a written dated statement. All lessors and lessees must be identified by name (§ 226.15 (a)). If, for example, one person arranges the lease and another person enters into the lease with the lessee, both must be identified as lessors (§ 226.2 (n) and (oo)). An address may augment the identification but need not be supplied as part of the disclosure form.

Item 2. This disclosure provides a brief description of the leased property (§ 226.15(b) (1)). Lessors may include a more detailed description including, for example, special accessories. There is no requirement that a serial number for the vehicle be disclosed.

Item 3. This disclosure shows the total amount of any initial payment the customer must make when the lease is entered into (§ 226.15(b) (2)). The components of the initial payment *must* be identified and *may*, at the lessor's option, be itemized with respect to dollar amount. The checklist is provided to aid in the identification.

The initial payment does not include any periodic payment disclosed under Item 5 even though a periodic payment may be due prior to delivery of the leased property.

Items 4, 5 and 6. When completed, these combined items disclose the term of the lease, the number, amount and due dates of each periodic payment, and the total amount of all periodic payments to be made under the lease (§ 226.15(b) (3)). The amount shown for each periodic payment should include any incidental charges for taxes, insurance or both, if those charges are payable as part of the periodic payment.

Item 7. This item discloses other charges payable to the lessor (§ 226.15(b) (15)). This excludes charges for official fees, taxes, insurance and charges disclosed under other items.

Item 8. This item discloses the total amount to be paid by the lessee during the lease term for taxes and other official fees (§ 226.15(b) (4)).

Item 9. This item requires disclosure of the types and amounts of insurance coverage, with their costs, if the insurance is provided by the lessor (§ 226.15(b) (6) (i)). In the alternative, the types and amounts of coverage required of the lessee must be disclosed (§ 226.15(b) (6) (ii)).

Item 10. When completed, this item discloses the conditions under which the lessee and lessor may terminate the lease prior to the end of the lease term. It also discloses the amount or method of determining the amount of the charge which the lessee must pay for early termination (§ 226.15(b) (12)). This item also discloses the amount or method of determining the amount of any default charges (§ 226.15(b) (10)).

Item 11. This disclosure of the security taken must include, in the space provided, a brief identification of the types of security interest and an identification of the property covered by each (§ 226.15(b) (9)).

Item 12. This disclosure, when completed, indicates the amount or method of determining the amount of any charges for late payment.

Item 13. This item provides alternative disclosures covering the several options a lessor may offer to a lessee to purchase the leased property. A lessor should use the disclosure applicable to the lease plan used. For example, if no option to purchase is offered, only the last sentence of the item need be used. If the lessor offers an option to purchase, the times at which it may be exercised must be supplied. The price must be disclosed for an option exercised at the end of the term and the price or method of computing the price for an option exercised during the lease term must be supplied (§ 226.15 (b) (11)).

Item 14. This item discloses all express warranties on the leased property made by the manufacturer or lessor and available to the lessee. A brief identification of the warranty must be supplied. A reference to the standard manufacturer's warranty, for example, would suffice.

Item 15. This item provides for disclosure of the maintenance and servicing responsibilities (§ 226.15(b) (8)). These responsibilities may be allocated either to the lessor or to the lessee, or may be divided between them.

Item 16. When completed, this item discloses reasonable standards for wear and use established by the lessor. The lessor is permitted but not required to set such standards. Therefore, the disclosure may be omitted by lessors who do not set standards for wear and use (§ 226.15(b) (8)).

Section 226.1202---CLOSED-END CREDIT
VEHICLE LEASE DISCLOSURE STATEMENT

Date 3/29/77

LESSOR(S)
U-Drive-It Car Dealer
1st National Bank

LESSEE(S)
John P. Doe

1. Description of leased property

YEAR	MAKE	MODEL	BODY TYPE	SERIAL #
1977	Cadillac	Seville	4 Door Sedan	9F51827112

3. Initial Charges, consisting of: (Actual dollar amounts may, but need not, be itemized.)
[x] Advance Payment [X] Refundable Security Deposit [ ] Trade-in Allowance
[x] Delivery Charge [X] Sales Tax on Advance Payment — $ 1,150.00

4. The term of this lease is 48 months (e.g., 6 of weeks, months, quarters). The first periodic payment is due on 3/29/77; subsequent payments on the 15th of each month thereafter.
5. Amount of each periodic payment: $232.50 Includes sales tax of $11.07 per month.
6. Total of Periodic Payments: $232.50 X 48 = $11,160 — $11,160.00

7. Total of Other Charges Payable to lessor: [X] Disposition Charge $ 50.00
[ ] Maintenance $ [ ] (Other-must be itemized) — $ 50.00

8. Official Fees and Taxes**
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. (including sales tax on advance and periodic payments.) — $ 837.36

9. Insurance
The following types and amounts of insurance are required in connection with this lease: $ 100,000 / 300,000 Bodily Injury; $ 25,000 Property Damage; $ 100 Deductible Collision; Comprehensive, Actual Cash Value;
[X] We (lessor) will provide the insurance coverage quoted above for a premium cost of $ 336.00** payable annually.
[ ] You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

10. Early Termination and Default
(a) Prior to the end of the lease term you may terminate this lease under the following conditions: At any time after 12 months from the date of the lease, on 30 days written notice, by surrendering the leased vehicle at our place of business.
The charge for such early termination is** $ 50.00 plus all periodic payments and other charges payable up to the date of the termination.

(b) Prior to the end of the lease term we may terminate this lease under the following conditions: Occurrence of default Your failure to make any payment or fulfill any other obligation under the lease; the entry of any judgement or attachment against you.
(Specify any other conditions)
Upon such termination we shall be entitled to the following charge(s) for default* $ 50.00 plus all costs of repaking possession of the leased vehicle, plus 50% of all unpaid periodic payments.
(Specify other charges)*

11. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: A security interest in the leased vehicle described in the security agreement attached to the lease contract.

12. Late Payments*
The charge for late payments is 3% per month for any amounts overdue for 10 days.

13. Lessee's Option to Purchase
You have an option to purchase the leased vehicle at the following times: At the end of the lease term.
If at the end of the term the price will be $ 4,200.00
[If prior to end of the term the price will be $*
[Lessee has no option to purchase the leased vehicle.]

14. Warranties
The leased vehicle is subject to the following express warranties: The vehicle is subject to the Cadillac new car warranty which accompanies the vehicle. Lessor makes no warranties, express or implied, of merchantability or fitness, with respect to the leased vehicle.

15. Maintenance
You are responsible for the following maintenance and servicing of the leased vehicle: All normal operating expenses, including gasoline, oil and lubrication; all maintenance and repairs necessary to maintain the leased vehicle in conformity with the standards for wear and use.
[We are responsible for the following maintenance and servicing of the leased vehicle.

16. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: No more than 50,000 miles during the lease term; compliance with manufacturer's warranty maintenance schedule; no body or interior damage with an aggregate repair cost in excess of $100.

*May use amount or method of determining the amount.
**Estimate

SECTION 226.3503--,FURNITURE LEASE-DISCLOSURE STATEMENT

DATE_____

1.
LESSOR(S) LESSEE(S)

2. Description of leased property [is attached].

ITEMS	PRICE	COLOR	STOCK #	MFG.	QTY.		

3. Initial Charges, consisting of: (Actual dollar amounts may, but need not be itemized.)
/__/Refundable Security Deposit /__/Delivery Charge /__/(Other-must be identified) $_____

4. The term of this lease is_____. (e.g., # of weeks, months, quarters) The first periodic payment is due on the_____of_____; subsequent payments on the_____of each_____thereafter.
5. Amount of each periodic payment: _____ (May include charges for taxes and waiver fee or insurance.)
6. Total of Periodic Payments: _____ X _____ = _____ $_____

7. Total of Other Charges Payable to Lessor: /__/Pick-up charge $_____ (Other-must be itemized) $_____

8. Official Fees and Taxes
Total amount you will pay during the term for official fees and taxes. $_____

9. Insurance
/__/You (lessee) agree to provide insurance coverage of the following types in the following amounts:_____
/__/We (lessor) will provide the following types and amounts of insurance coverage at the cost indicated:_____
/__/You agree to pay the following waiver fee in lieu of insurance: $_____ This amount is payable_____

10. Maintenance
[You are responsible for the following maintenance of the leased property: _____
[We are responsible for the following maintenance of the leased property: _____

11. Standards for wear and use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased property: _____

12. Early Termination and Default
(a)[Prior to the end of the lease term you may terminate this lease under the following conditions: _____
[The charge for such early termination is* _____

(b)[Prior to the end of the lease term we may terminate this lease under the following conditions: [Occurrence of default (specify)_____
[(Specify other conditions)_____
[Upon such termination we shall be entitled to the following charge(s) for [default* _____
[(Specify other charges)* _____

13. Security Interest
We reserve a security interest of the following type in the listed property to secure performance of your obligations under this lease: _____

14. Late Payments*
The charge for late payments is _____

15. Lessee's Option to Purchase
[You have an option to purchase any or all items of the leased property at the following times: _____
[If at the end of the term the price will be $_____
[If prior to end of the term the price will be $* _____
[Lessee has no option to purchase the leased property.]

16. Warranties
The leased property is subject to the following express warranties: (Identify any manufacturer's or Lessor's warranties available to the lessee.)* _____

* May use amount or method of determining the amount.

INSTRUCTIONS FOR COMPLETION OF § 226.1503—FURNITURE LEASE DISCLOSURE STATEMENT

GENERAL INSTRUCTIONS

Completion of this form may be facilitated by reference to the following instructions. Any questions as to the permissibility or accuracy of a specific disclosure may be answered by reference to Regulation Z, 12 CFR Part 226.

Information which is required to be disclosed may be estimated if the information is unknown or unavailable, provided that the information is clearly identified as an estimate and the estimate is based on the best information available and is reasonable (§ 226.6(f)).

Any inapplicable disclosures may be deleted.

All numerical amounts must be stated in figures and shall be printed in not less than the equivalent of ten point or elite typewritten numerals or legibly handwritten (§ 226.6 (a)).

Certain numerical items may be disclosed by giving the amount or the method of determining the amount. These items are identified by an asterisk.

SPECIFIC INSTRUCTIONS

Item 1. The disclosures must be made on a written dated statement. All lessors and lessees must be identified by name (§ 226.15(a)). If, for example, one person arranges the lease and another person enters into the lease with the lessee, both must be identified as lessors (§ 226.2(n) and (oo)). An address may augment the identification but need not be supplied as part of the disclosure form.

Item 2. This disclosure provides a brief description of the leased item (§ 226.15(b)(1)). In the left column the name of the item should appear. The relevant entry should be made in the appropriate box in the columns to the right of the names of the items as indicated by the column headings. All of the descriptive elements in the column headings, except the one labelled "ITEMS," are examples only. Those which are inapplicable to a lease plan may be deleted. Other descriptive column headings may be added (as indicated by the blank columns) if the lessor desires.

Item 3. This disclosure shows the total amount of any initial payment the customer must make when the lease is consummated (§ 226.15(b)(2)). The components of the initial payment *must* be identified and *may*, at the lessor's option, be itemized with respect to dollar amount. The checklist is provided to aid in the identification.

The initial payment does not include any periodic payment disclosed under item 6, even though a periodic payment may be due prior to delivery of the leased items.

Items 4, 5 and 6. When completed, these combined items disclose the term of the lease, the number, amount and due dates of each periodic payment, and the total amount of all periodic payments to be made under the lease (§ 226.15(b)(3)). The amount shown for each periodic payment should include any incidental charges for taxes, insurance or both, if those charges are payable as part of the periodic payment.

Item 7. This item discloses other charges payable to the lessor (§ 226.15(b)(5)). This excludes charges for official fees, taxes, insurance and charges disclosed under other items.

Item 8. This item discloses the total amount to be paid by the lessee during the lease term for taxes and other official fees (§ 226.15(b)(4)).

Item 9. This item provides alternative methods of disclosing insurance coverage. It provides a disclosure for situations in which the lessee provides the coverage, in which case the types and amounts of coverage must be specified (§ 226.15(b)(6)(ii)). It provides a disclosure for situations in which the lessee procures coverage through the lessor, in which case the types, amounts and costs of coverage must be specified (§ 226.15(b)(6)(i)). It also provides disclosure of a fee in lieu of insurance.

Item 10. This item, when completed, discloses the maintenance responsibilities of the parties. If only one party has maintenance responsibilities the inapplicable disclosure may be omitted (§ 226.15(b)(8)).

Item 11. When completed, this item discloses standards for wear and use established by the lessor. The lessor is permitted, but not required, to set such standards (§ 226.15(b)(10)).

Item 12. When completed, this item discloses the conditions under which the lessee and lessor may terminate the lease prior to the end of the lease term. It also discloses the amount or method of determining the amount of the charge which the lessee must pay for early termination (§ 226.15(b)(12)). This item also discloses the amount of method of determining the amount of any default charges (§ 226.15(b)(10)).

Item 13. This disclosure of the security taken must include, in the space provided, a brief identification of the types of security interest and an identification of the property covered by each such interest (§ 226.15(b)(9)).

Item 14. This disclosure, when completed, indicates the amount or method of determining the amount of any charges for late payment.

Item 15. This item provides alternative disclosures covering the several options a lessor may offer to a lessee to purchase the leased property. A lessor should use the disclosure applicable to the lease plan used. For example, if no option to purchase is offered only the last sentence of the item need be used. If the lessor offers an option to purchase, the relevant times must be supplied. The price for exercise of the option at the end of the term must be disclosed and the price or method of computing the price for an exercise of the option during the lease term must be supplied (§ 226.15(b)(11)).

Item 16. This item discloses all express warranties applicable to the leased property made by the manufacturer or lessor and available to the lessee. A brief identification of the warranty must be supplied. A reference to the standard manufacturer's warranty would suffice (§ 226.15(b)(7)).

SECTION 226.1503-- FURNITURE LEASE DISCLOSURE STATEMENT

DATE May 1, 1977

1.
LESSOR(S)

XYZ Furniture Lessor, Inc.

LESSEE(S)

S. Customer

2. Description of leased property [is attached].

ITEMS	PRICE	COLOR	STOCK #	MFG.	QTY.		
Sofa	$650.00	Green	12345	Alpha Sofa Company	1		
End Table	150.00	Mahogany	12346	Beta Furniture Company	2		
Coffee Table	200.00	Mahogany	12347	Beta Furniture Company	1		
Recliner Chair	500.00	Brown	12348	Gamma Chair Company	1		

3. Initial Charges, consisting of: (Actual dollar amounts may, but need not be itemized.) /X/Refundable Security Deposit /X/Delivery Charge / /(Other-must be identified) — $ 50.00

4. The term of this lease is 24 months. (e.g., # of weeks, months, quarters) The first periodic payment is due on the 1st of June 1977; subsequent payments on the 1st of each month thereafter.

5. Amount of each periodic payment: $40.00 (May include charges for taxes and waiver fee or insurance.)

6. Total of Periodic Payments: $40.00 x 24 = $960.00 — $ 960.00

7. Total of Other Charges Payable to Lessor: /X/Pick-up charge $ 20.00 (Other-must be itemized) $ — $ 20.00

8. Official Fees and Taxes
Total amount you will pay during the term for official fees and taxes. — $ 55.00**

9. Insurance
/ /You (lessee) agree to provide insurance coverage of the following types in the following amounts:
/X/We (lessor) will provide the following types and amounts of insurance coverage at the cost indicated: property damage insurance in the amount of $1650.00 for a $20.00 premium.
/ /You agree to pay the following waiver fee in lieu of insurance: $ This amount is payable

10. Maintenance
You are responsible for the following maintenance of the leased property: Cleaning and repair of minor damage from ordinary use.

We are responsible for the following maintenance of the leased property: Repair of major damage from ordinary use, if without such repairs the items are not functional.

11. Standards for wear and use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased property: Use of the leased property out of doors without protection from the elements will be considered unreasonable and excessive use.

12. Early Termination and Default
(a) Prior to the end of the lease term you may terminate this lease under the following conditions: After expiration of 1/2 the lease term, if you give us 10 days written notice and the property is delivered to our place of business.
The charge for such early termination is 1/2 the amount of the total of periodic payments unpaid at the time of termination, less taxes, plus $20.00 pick up charge if we provide transport of the leased items.

(b) Prior to the end of the lease term we may terminate this lease under the following conditions: Occurrence of default (specify) Failure to make a payment under the lease within 30 days after it is due or removal of the leased property from the State without our written permission.
(Specify other conditions)

Upon such termination we shall be entitled to the following charge(s) for [default* All unpaid periodic payments, less taxes and less unaccrued but previously paid taxes, less unaccrued but previously paid insurance premiums, plus $20.00 pickup charge if we provide transport of the leased property.
(Specify other charges)*

13. Security Interest
We reserve a security interest of the following type in the listed property to secure performance of your obligations under this lease: A security interest, as evidenced by the document entitled "Security Agreement" attached hereto and made a part hereof, in the leased property.

14. Late Payments*
The charge for late payments is $3.00 for each periodic payment late more than 10 days.

15. Lessee's Option to Purchase
[You have an option to purchase any or all items of the leased property at the following times: At end of term or at any other time after 1/2 the term.
[If at the end of the term the price will be Sofa - $100.00, End Table - $40.00, Coffee Table - $45.00, Recliner Chair - $90.00

[If prior to end of the term the price will be computed by adding the end term purchase option price to the total periodic payments unpaid, less taxes, at the time of exercise of the option.

16. Warranties
The leased property is subject to the following express warranties: Those warranties contained in documents entitled "Standard Manufacturers Warranty" attached hereto and made a part hereof.

* May use amount or method of determining the amount.

Board of Governors of the Federal Reserve System, December 20, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-38114 Filed 12-28-76;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 305]

[PDR-43, Docket 30259, December 23, 1976]

RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS BY THE BUREAU OF ENFORCEMENT

Limitation on Confidentiality Proposed Rulemaking

Notice is hereby given that the Civil Aeronautics Board is proposing to amend Part 305 of its Procedural Regulations (14 CFR Part 305) to provide that orders initiating Part 305 investigations be made available to the public in cases where the order does not identify the persons under investigation, but that the remainder of the record of Part 305 proceedings continue to be kept confidential except as otherwise required by law. The purpose of the proposals is described in the Explanatory Statement and the proposed amendments are set forth in the Proposed Rule.

The amendments are proposed under the authority of sections 204(a) and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 788; 49 U.S.C. 1324, 148.

Interested persons may participate in the proposed rulemaking through submission of twenty (20) copies of written data, views, or arguments pertaining thereto, addressed to Docket 30259, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant comments received on or before February 14, 1977 will be considered by the Board before taking final action on the proposed rule. Copies of such documents will be available for examination by interested persons in the Docket Section of the Board, Room 711 Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., upon receipt thereof.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT. Part 305 of the Board's Procedural Regulations sets forth procedures to be followed in informal investigations conducted by the Board to determine whether formal enforcement action should be instituted. Section 305.10 now specifies that the entire record of Part 305 proceedings, including the order initiating the investigation, shall not be available to the general public.

When Part 305 was enacted in 1963, the Board's determination to keep Part 305 proceedings entirely confidential was influenced by concern both for the rights of the parties under investigation and for the efficiency of the investigation. Since Part 305 investigations are nonadjudicatory and need not result in the institution of any formal charges, the Board thought it appropriate to protect persons under such informal investigation from unfair notoriety by according strict confidentiality to the entire record of Part 305 proceedings. It was also thought that the nonpublic nature of the proceedings would encourage a more cooperative attitude on the part of witnesses and thereby facilitate development of leads during the initial phases of the investigation.

The confidentiality of Part 305 proceedings has always applied equally to orders initiating Part 305 investigations as well as to other parts of the record. However, in light of the Board's experience under Part 305 and evolving Federal policies in favor of governmental openness, we are now persuaded that blanket confidentiality of initiating orders goes beyond what is necessary to protect individual rights or to facilitate informal investigations. Initiating orders are usually drafted in very general terms, indicating only the types of suspected violations and the markets involved, but without any mention of specific names of suspected violators. Since public disclosure of such broadly drafted orders would not infringe the rights of any identifiable person, the protective purpose of § 305.10 would not appear to apply to these documents. We have therefore tentatively determined to amend § 305.10 to provide that initiating orders which do not disclose the identity of particular persons or firms under investigation shall be published in the FEDERAL REGISTER.

We are also amending § 305.10 to eliminate any suggestion of conflict between Part 305 and the Board's obligations under the Freedom of Information Act (FOIA), 5. U.S.C. 552. It may be that, pursuant to a request made under FOIA § 552(a)(3), the Board will be obliged to disclose certain portions of the record of a Part 305 proceeding, while properly withholding other portions pursuant to FOIA § 552(b)(7) or other applicable exemptions. In such event, the Board might appear to be acting in contravention of its own regulation in § 305.10. In order to avoid the appearance of such conflict, the Board is amending § 305.10, thereby making it clear that we will permit disclosure of the Part 305 record to the extent "required by law." Which records, if any, are actually disclosed will, of course, be determined on a case-by-case analysis of FOIA requests.

Although the proposed rule is procedural and could be promulgated without prior notice to the public, we have determined that the privacy aspects involved in this matter make it appropriate for the Board to provide an opportunity for the submission of comments by interested persons for our consideration before taking final action.

Accordingly, it is proposed to amend Part 305 of the Board's Procedural Regulations (14 CFR Part 305) as set forth below:

Revise § 305.10 to read as follows:

§ 305.10 Nonpublic character or proceedings.

Investigations shall be attended only by the witnesses and their counsel, the administrative law judge, the Investigation Attorney, other Board personnel concerned with the conduct of the proceeding and the official stenographer. All orders initiating investigations, motions to quash or modify investigation subpoenas, orders disposing of such motions, documents, and transcripts of testimony shall be part of the record in the investigation. All orders initiating investigations which do not disclose the identity of the particular persons or firms under investigation shall be published in the FEDERAL REGISTER. Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal Board documents which shall not be available to the general public. The use of such records in Board proceedings subject to Part 302 of the Rules of Practice shall be governed by §§ 302.19(g) and 302.39 and by the law of evidence applicable to Board proceedings.

[FR Doc.76-38202 Filed 12-28-76;8:45 am]

[14 CFR Part 313]

[PDR-42, Docket 30247, Dated December 22, 1976]

IMPLEMENTATION OF ENERGY POLICY AND CONSERVATION ACT

Procedural Regulations

Notice is hereby given that the Civil Aeronautics Board has under consideration the adoption of a new Part 313 of its Procedural Regulations implementing the Energy Policy and Conservation Act, Pub. L. 94-163, 42 U.S.C. 6201 *et seq.* The principal features of the proposal are described in the Explanatory Statement, to which the proposed rules are appended. The rules are proposed under the authority of section 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324, and section 382(b) of the Energy Policy and Conservation Act, 89 Stat. 940, 42 U.S.C. 6362(b).

Interested persons may participate in the proposed rule making in Docket 30247 through submission of twelve (12) copies of written data and views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C., 20428. Individual members of the general public who wish to express their interest as consumers by participating informally in this proceeding may do so through the submission of comments in letter form to the Docket Section at the address noted above, without the necessity of filing additional copies thereof.

All relevant material in comments received by February 14, 1977, will be considered by the Board before taking final action on the proposed rules. Copies of any such comments received will be available for examination by the public in the

Docket Section of the Board, Room 710 Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

The Energy Policy and Conservation Act, Pub. L. 94–163, 42 U.S.C. 6201 et seq., (hereinafter "EPCA") establishes a national energy program covering domestic energy supply availability, standby rationing authority, improvement of energy efficiency in various sectors of the nation's economy, and petroleum pricing and allocations. Title III of EPCA relates to the goal of improving energy efficiency and consists of parts pertaining to automotive fuel efficiency, energy conservation programs for consumer products other than automobiles, energy conservation programs by the states, industrial energy conservation programs, and "other federal energy conservation measures." Included in the latter is section 382, which pertains to energy conservation in the policies and practices of certain Federal agencies which regulate various aspects of transportation, among them the Board.

Section 382 calls upon the named agencies, including the Board, to submit to Congress a series of three studies and reports on energy conservation practices and policies within their respective jurisdictions. The Board has submitted the initial two reports, and the last is to be filed by December 22, 1976. In addition to these one-time reports, the agencies are directed as a continuing matter, where practicable and consistent with their authority under other laws, to include in any "major regulatory action * * * a statement of the probable impact of such major regulatory action on energy efficiency and energy conservation." None of the terms are defined. Indeed, the Congress specifically left "major regulatory action" to be defined by rule of the agency.

The objective of this rule, then, is to make that definition and also to outline the policies and procedures generally to be followed by the Board in making the energy statements called for by section 382(b) of EPCA.

As a general matter, we believe that the EPCA goals of energy conservation and the improvement of energy efficiency must be viewed as supplementing the Board's existing—and continuing—mandates under the Federal Aviation Act of 1958 (hereinafter the "Act") to regulate air transportation in the public interest, and consistent with the public convenience and necessity (see section 102, 49 U.S.C. 1302). As such, EPCA provides additional specific guidance to the Board as to those factors which it shall consider to be in the public interest in carrying out its responsibilities, and are thus to be weighed in the decision-making process just as the Board's more traditional policies and missions. Both EPCA and the Act confer upon this agency the responsibility of balancing sometimes conflicting public interest considerations, but we perceive no unusual difficulty in giving full effect to mandates of both statutes. In this regard, the weight to be accorded the various factors bearing upon the public interest, including energy conservation and efficiency, will naturally differ from case to case depending upon the particular facts and circumstances involved, and we imply no particular preference herein.

PROCEDURE

The Board has in the past considered the energy implications of its major actions as part of its responsibilities under the National Environmental Policy Act of 1969 ("NEPA"), in environmental assessments, negative declarations, and impact statements prepared pursuant to Part 312 of the Board's Procedural Regulations and, prior to August, 1975, § 339.110 of the Policy Statements (now repealed). Moreover, findings and conclusions with respect to energy conservation and efficiency in compliance with EPCA have been made on an ad hoc basis in several significant Board decisions rendered since the enactment of EPCA, quite apart from the environmental considerations. For example, EPCA findings have been made in the following cases: *Miami-Los Angeles Competitive Nonstop Case,* Order 76–3–93 (March 15, 1976); *Boston-Atlanta Nonstop Service Case,* (Order 76–6–122 (June 16, 1976) and Order 76–7–112 (July 28, 1976); *Transatlantic Route Proceeding,* Docket 25908, decision submitted to the President on July 15, 1976; *Supplemental Renewal Proceeding,* Docket 23944, decision submitted to the President on July 15, 1976; Regulation SPR–110, adopting *Part 371-Advance Booking Charters* (adopted September 1, 1976); *Las Vegas-Calgary/Edmonton Route Proceeding,* Order 76–9–140 (served September 28, 1976); and *Chicago-Montreal Route Proceeding,* Order 76–11–32 (served November 8, 1976).

The Board's experience in considering environmental and energy factors in its decisions leads us to conclude that the procedures required to formally implement the energy statement requirement of EPCA need not be extensive. Specifically, we do not believe that the procedures developed in response to the unique requirements of NEPA, as interpreted by the courts, are either necessary or appropriate to implement EPCA in the context of the Board's existing statutory administrative hearing processes.[1]

Under the statutory scheme governing the Board's processes, most Board actions, including actions taken after notice and hearing, are taken in response to applications filed by air carriers and others seeking, for example, route authority, changes in fares and rates, mergers or acquisitions, and so forth. The NEPA procedures contemplate detailed environmental consideration, including where appropriate detailed draft and final environmental impact statements, prior to a hearing on a matter. At best, such a procedure is awkward, since it requires substantial fact-finding and preliminary decision-making well in advance of statutorily-mandated hearings, at a time when no federal proposal for action exists. Indeed, in cases decided after notice and hearing, the first significant federal action with respect to an application is necessarily the administrative law judge's initial or recommended decision. Thus, the hearing process is intended simply to develop the record upon which, under the Federal Aviation Act, decisions must be based, and is primarily a fact-finding mechanism. Moreover, the need for information and environmental consideration so early in the proceedings places a not insignificant burden upon applicants, who must provide the information sometimes long before their specific proposals and relevant evidentiary materials have taken shape, and upon the Board's staff, which must make environmental conclusions without benefit of the more definitive and ample material available at the hearing and without opportunity for cross-examination.

In the absence of any specific requirements of EPCA to the contrary, and we perceive none, we believe it preferable as a general matter to integrate the Board's EPCA procedures in hearing cases within our normal hearing process rather than the unique NEPA procedures. Thus, we will provide that the initial or recommended decision integrate findings and conclusions with respect to the energy conservation and efficiency consequences of the various alternative actions in issue in the case, including where appropriate a brief analysis of such consequences in light of the other public convenience and necessity factors relevant to the decision. These findings and conclusions shall constitute the energy "statement" required by EPCA. This is the procedure we have in essence followed on an *ad hoc* basis since enactment of EPCA. The detail and comprehensiveness of the energy findings and conclusions will of course depend upon the facts and circumstances of each particular case, and no hard and fast rule can be adopted here.[2] As is the case with all other aspects of an initial or recommended decision, the adequacy of the energy statement is subject to Board review under our usual discretionary review procedures.

[1] Cf., "Greene County Planning Board v. Federal Power Commission," 445 F. 2d 412 (2nd Cir., 1972), cert. denied 409 U.S. 849 (1972). But see, Aberdeen & Rockfish R. Co. v. SCRAP, 422 U.S. 289, 320–321 (1975).

[2] Naturally, the preciseness of findings with respect to energy consumption and efficiency is subject to a "rule of reason." Thus, while we foresee no unusual problems in determining the primary impact of Board actions in terms of aviation fuel consumption, some possible secondary effects—such as on automobile fuel consumption, for example—may be difficult if not impossible to determine. For this reason, we provide that the energy statement contain findings with respect to energy consumption and efficiency "to the extent practicable" (313.6(a)).

It shall be the responsibility of the applicants and other parties, as directed by the administrative law judge, to provide sufficient information to enable the administrative law judge to make the energy statement, if one is required. We contemplate that such information normally will be submitted pursuant to the usual practice in hearing cases, *viz*, as information responses, direct exhibits, rebuttal exhibits, etc. We do not, at this point, believe it necessary to specify by regulation the nature and extent of the information to be submitted. As in the case of other evidentiary submissions, that will be within the judgment and control of the administrative law judge. The parties and other participants will of course be free to submit such evidence and make such arguments to the administrative law judge or the Board as they desire with respect to the energy matters involved in a proceeding, whether the action does or does not involve a "major regulatory action" as defined in this part.

In cases not normally involving hearings, including cases customarily handled by show cause procedures, the energy statement, when required, will be incorporated into the Board's order disposing of the substantive issues involved. In such instances, the energy information needed to make an energy statement shall be submitted along with any other materials submitted in justification of an application, or with the application itself. Here again, we do not believe it necessary at this time to delineate the exact information to be submitted. If required, the Board's staff may request the submission of additional or more detailed information from applicants or other participants. It should be pointed out that applications not normally requiring hearings will not often involve a "major regulatory action" as defined in this part. Nevertheless, applicants have the responsibility to provide sufficient information to enable the Board to make an independent determination of whether an energy statement will be required in any particular instance. In most cases, it would appear that a projection of expected fuel usage or a reasoned estimate thereof will suffice.

MAJOR REGULATORY ACTION

The Board processes hundreds of applications each month. Most of the resulting orders or decisions are routine and are not of major regulatory significance, except perhaps to the parties directly involved. Some are "major" actions in terms of the Federal Aviation Act's policies and the impact upon the air transportation industry, but may or may not be significant in terms of probable impact upon energy conservation and efficiency. Clearly, it would be administratively burdensome as well as unproductive to require an energy statement in each Board order or decision, or in decisions which, while major in other respects, have no significant energy implications. Apparently recognizing these factors, the Congress delegated the task of defining those "major regulatory actions" which will require an energy statement to the Board. Given the focus of EPCA on energy conservation and efficiency, we believe it reasonable to define "major regulatory actions" in terms of the energy impact involved.

We have selected a quantitative rather than a qualitative approach to differentiate between those "major" actions of the Board which would ordinarily require an energy statement and other actions which do not, and have selected 10 million gallons net annual change in aviation fuel consumption (including jet fuel and aviation gasoline) as the threshold. To some extent, a quantitative threshold is simplistic because it does not recognize the differing characteristics involved in the gamut of cases that come wthin the Board's jurisdiction. Board cases may involve such disparate matters as, for example, airline route authority, charter rules, rates and ratemaking standards, mergers and acquisitions, intercarrier agreements, and so forth.[3] On the other hand, this simplicity is also the major virtue of a quantitative threshold, for it eliminates the uncertainty involved in attempting to determine, on a case-by-case basis, when energy impact is "substantial" or "significant." The burden of compliance and of administration is thereby much eased, and this outweighs, in our opinion, whatever inflexibility may be inherent in quantifying the threshold value.

As to the specific value selected—10 million gallons net annual change in consumption—we believe it to be sufficiently sensitive to encompass virtually all cases in which energy considerations could matter and yet high enough to exclude the vast bulk of Board actions which have little if any meaningful energy impact. Ten million gallons represent approximately 1/10th of 1 percent of the certificated route carriers' total consumption of aviation gasoline and jet fuel in calendar year 1972, which is the last full year not reflecting the effects of the Arab oil embargo and OPEC price escalation, and the resultant petroleum conservation measures.[4] Calendar 1972 also represents the base year used by Congress for purposes of measuring the energy conservation effects of EPCA programs in transportation, see section 382(a)(2).

We recognize, of course, that any quantitative value which may be selected is arbitrary to some extent. Thus, the 10-million gallon threshold should be viewed as an experimental figure, which may well be adjusted in the light of experience over the course of time. It may appear that a different value would be more realistic, or that a relative value, such as 1/10 of 1 percent of the last full calendar year's airline consumption, would more accurately reflect the energy impact of Board actions at any particular time. For a starting point, however, we believe that the 10-million gallon figure is reasonable. Thus, in terms of the Board's current case load, this threshold would cover approximately one-half of the route cases currently being handled by the Board's Bureau of Operating Rights, *i.e.*, in which there is a potential change in fuel usage in the first year of operations exceeding the threshold. This strikes a reasonable balance, in our view, between the understandable importance of careful consideration of the Board's actions on energy consumption and efficiency, on the one hand, and the public interest in minimizing unproductive procedures, on the other hand.

ENERGY EFFICIENCY

Section 313.3(b) of this regulation defines "energy efficiency" generally as "the ratio of the useful output of services in air transportation to the energy consumption of such services." We are not prepared to be more specific or to render the definition in quantifiable terms at this time. Rather, we hope that the Board's further experience in administering EPCA, as well as the comments of interested persons on the contents of this proposed rule, will shed further light on the problems of quantifying energy efficiency in the context of the disparate types of cases that come before the Board. In this regard, we would expect that the outlines of some realistic and useful ways of measuring energy efficiency will continue to be explored in those proceedings in which energy statements are appropriate.

As a practical matter, there may be any number of valid ways to measure efficiency per unit of fuel consumed. Changes in passenger load factors or ton load factors, which are simply ratios of utilized capacity to available capacity, have been suggested, for one. Whichever measure is used, it is necessary to compare the efficiency consequences of any particular proposed Board action with some base standard in order to determine whether the action will have either an adverse or beneficial impact on energy efficiency. Any number of standards might be appropriate, reflecting for example the historical fuel efficiency—however measured—of the industry as a whole, the trunk or local service carriers separately, a particular air carrier, a city-pair market, a group of markets comparable on a mileage, density or other basis, and so

[3] Notably, the Board's jurisdiction does not encompass direct authority over the carriers' equipment or schedules. See section 401(e)(4) of the Act, which provides that "[n]o term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require * * * (49 U.S.C. 1371(e)(4)). The House report on H.R. 7014, a forebear of EPCA, states that the Board "regulates airline routing and schedules," Report No. 94-340, 94th Congress, 1st Session (July 9, 1975), on the Energy Conservation and Oil Policy Act of 1975, at 75. The House report fails to give recognition to the Congressional mandate of section 401(a)(4) of the Act to the extent that it implies any direct Board power to regulate airline scheduling decisions.

[4] Calendar 1972 consumption, excluding consumption by supplemental carriers, totaled 10.3 billion gallons. CAB Handbook of Airline Statistics, 1973 Ed., Table 57.

forth. Additionally, a base period is required. This might be 1972 (the last full year of operations not reflecting the effects of the fuel crisis and steep fuel price escalations), the most recent available year, or some other period. As the Board has discovered in recent cases, establishing a method for determining fuel efficiency is not easy. Based on the information and experience now available, we are not yet prepared to suggest any one particular method. It may well be that a variety of methods are appropriate, depending upon the particular facts and circumstances in a proceeding, and the type of action contemplated.

In this regard, we should note that while some types of Board actions inherently contribute toward raising energy efficiency, it may be difficult if not impossible to meaningfully quantify that effect. For example, it is intuitively obvious that Board actions which increase carrier routing and scheduling flexibility can benefit efficiency, such as in the case of the realignment of a carrier's route authority into one continuous segment, or the removal of specific operational restrictions or limitations contained in a carrier's certificates. Yet, the immediate impact of such actions in terms of actual operational changes may be small or even unknown, since a carrier's decisions with respect to schedules, routings, equipment used, etc. are predicated upon a great variety of factors, only one of which is the characteristics of the operational authority held. Over longer periods of time, of course, it is widely recognized that the route structure is critical in terms of efficiency, but such long-term consequences are often difficult to measure in the context of the individual case. Thus, the quantification of energy efficiency consequences in some cases may in fact be unrealistic and give meaningless results.

Similarly, some Board actions which on their face may be perceived to have detrimental impact on energy efficiency in the short run may in fact be intrinsically neutral or even beneficial. An example, in our view, is the certification of first competitive service. Historically, load factors in competitive markets have on the whole been lower than in monopoly markets.[5] Moreover, it is generally—although not universally—the case that one consequence of the certification of a competitor in a monopoly market is to depress load factors in the short term, since neither normal traffic growth nor the new traffic often stimulated by new service is usually able to absorb the additional capacity introduced in the market in the first year of operations. In such an instance, it would appear that energy efficiency has suffered. However, over time there is no intrinsic reason why, at any given fare level, a competitive market cannot reach an equilibrium of demand and supply whereby market load factor returns to a reasonable level. Thus, reliance on forecast year comparisons of fuel efficiency may well be meaningless or even substanially misleading in the typical competitive route case.

It may well be that after all is said and done the typical Board route proceeding will be found to have little—if any—impact on energy efficiency *per se* though the fuel consumption involved may be considerable. It is certainly clear that many actions which affect airline fuel efficiency significantly are under control of the carriers or other agencies, and not the Board.[6] We recognize, on the other hand, that fuel efficiency may be significantly—albeit indirectly—affected by the Board's fare policies, particularly with respect to load factor standards and seating configuration standards.[7] In short, any definition of "energy efficiency" by rule which has the effect of establishing some type of quantifiable efficiency criteria will have to be closely scrutinized to ensure that it reflects the true impact of the particular Board action involved in a proceeding.

Adopt a new Part 313 of the Board's Procedural Regulations (14 CFR Part 313), to read as follows:

PART 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Sec.

AUTHORITY: Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; and section 382(b) of the Energy Policy and Conservation Act, 89 Stat. 940, 42 U.S.C. 6362(b).

§ 313.1 Purpose, Scope and Authority.

(a) The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., hereinafter "EPCA") authorizes and directs certain actions to conserve energy supplies through energy conservation programs and where necessary, the regulation of certain energy uses, and to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. In furtherance of these purposes, section 382 of EPCA requires several transportation regulatory agencies, including the Board, to submit a number of reports to the Congress with respect to energy conservation and efficiency, and, where practicable and consistent with the exercise of the Board's authority under other law, to include in any major regulatory action a statement of the probable impact of such action on energy efficiency and energy conservation. Section 382(b) of EPCA directs the Board to define the term "major regulatory action" by rule.

(b) Section 204(a) of the Federal Aviation Act of 1958, as amended (hereinafter "Act") authorizes the Board to establish such rules, regulations and procedures as are necessary to the exercise of its functions and are consistent with the purposes of the Act.

(c) The purpose of these regulations is to establish procedures and guidelines for the implementation of the Board's responsibility under EPCA to include in any major regulatory action taken by the Board a statement of the probable impact of such action on energy efficiency and energy conservation.

(d) These regulations apply to all proceedings before the Board, as provided herein.

§ 313.2 Policy.

(a) *General.* It is the policy of the Board to view the conservation of energy and the energy efficiency improvement goals of EPCA as part of the Board's overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 102 of the Federal Aviation Act (49 U.S.C. 1302). To the extent practicable and consistent with the Board's authority under the Act and other law, energy conservation and efficiency are to be weighed in the decisionmaking process just as are the Board's traditional policies and missions.

(b) *Implementation.* Implementation of this policy is through the integration of energy findings and conclusions into decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) *Proceedings in progress.* The provisions of this Part are intended primarily for prospective application. Proceedings in progress on the effective date of this Part, in which an application has been docketed but no final decision made public, shall adhere to § 313.6(a), *Provided,* That the fair, efficient, and timely administration of the Board's regulatory activities is not compromised thereby. Nothing herein shall imply a requirement for new or additional hearings, a reopening of the record, or any other procedures which would tend to delay a timely decision in proceedings in progress.

(d) *Hearings.* Public hearings will not normally be held for the purpose of implementing EPCA, particularly in connection with proposed actions which do not require notice and hearing as a prerequisite to decision under the Act. Hearings may be ordered in exceptional circumstances where the proposed action is of great magnitude or widespread public interest and, in addition, presents complex issues peculiarly subject to resolution through evidentiary hearings and the process of cross examination.

[5] *The Domestic Route System: Analysis and Policy Recommendations,* a staff study by the Bureau of Operating Rights, Washington, D.C., CAB, October 1974.

[6] We noted a number of these in our second report to Congress in compliance with section 382(a)(2) of EPCA, submitted on April 22, 1976. They include airways and airport delays, and changes in operational procedures such as reduction of cruise speeds, better planning of flight profiles, taxiing and gate hold procedures, etc.

[7] The Board is reexamining its load-factor standard by rulemaking, see Order 75-6-72 (June 13, 1975).

§ 313.3 Definitions.

As used in this Part:

(a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Energy efficiency" means the ratio of the useful output of services in air transportation to the energy consumption of such services.

(c) "Energy statement" is a statement of the probable impact of a major regulatory action on energy efficiency and energy conservation, contained in a decision, opinion, order, or rule.

(d) "EPCA" means the Energy Policy and Conservation Act.

(e) "Major regulatory action" is any decision by the Board or administrative law judge requiring an energy statement pursuant to § 313.4.

(f) "NEPA" means the National Environmental Policy Act of 1969.

§ 313.4 Major Regulatory Actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by the Board because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a) (1) of this section, the following types of actions shall not be deemed as major regulatory actions requiring an energy statement:

(1) Tariff suspension orders under sections 1002(g) or 1002(j) of the Act, temporary suspensions under section 401(j) of the Act; emergency exemptions or temporary exemptions not exceeding 24 months under sections 101(3) or 416 (b) of the Act, interim approval of agreements under section 412, and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders; and

(4) Actions taken under delegated authority.

(c) Notwithstanding paragraph (a) (1) of this section, the Board may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that—

(1) The inclusion of an energy statement is not consistent with the exercise of the Board's authority under the Act or other law;

(2) The inclusion of an energy statement is not practicable because of time constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

§ 313.5 Energy Information.

(a) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information with respect to the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the Board, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this Part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to the Board's usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for Board action, the energy information shall be submitted with such application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6 Energy Statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the Board, as the case may be, shall normally make findings and conclusions with respect to:

(1) The net change in energy consumption;

(2) The net change in energy efficiency; and

(3) The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by the Board.

(c) In the case of orders to show cause initiated by the Board, energy findings and conclusions may be omitted if adequate information is not available. In such instances the energy statement shall be integrated into the final decision.

§ 313.7 Integration with Environmental Procedures.

(a) In proceedings in which an environmental impact statement or a detailed environmental negative declaration is prepared by a responsible official pursuant to the Board's Procedural Regulations implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this Part may be included in such statement or declaration in order to yield a single, comprehensive document. In such instances, the procedures of the Board's NEPA regulations shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the Board, as the case may be, to make the findings and conclusions required by § 313.6(a).

(b) A determination that a major regulatory action within the meaning of EPCA and this Part may be involved in a proceeding is independent from any determination that the proceeding is a "major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA, and vice versa.

[FR Doc.76-38203 Filed 12-28-76;8:45 am]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[29 CFR Part 1601]

NOTICE AGENCIES

Proposed Designation

Pursuant to §§ 1601.12(e) and (i), Title 29, Chapter 14 of the Code of Federal Regulations as revised and published in the FEDERAL REGISTER, 40 FR 3210M, January 20, 1975, the Equal Employment Opportunity Commission (hereinafter referred to as the Commission) proposes that the agency listed below be designated as "Notice Agency" (§ 1601.12(e)). The purpose for "Notice Agency" designation is to authorize such agencies to be notified by the Commission of the filing of charges with the Commission.

This announcement commences the 15-day period within which any person or organization may file written comments with the Commission as provided for under § 1601.12(i). At the expiration of the 15-day period, the Commission may effect such designation of each of the agencies by publishing an amendment to § 1601.12(m). The proposed "Notice Agency" is as follows:

Raleigh (North Carolina) Community Relations Commission

Written comments pursuant to this notice must be filed with the Commission on or before January 12, 1977.

Signed at Washington, D.C. this 23rd day of December 1976.

ETHEL BENT WALSH,
Vice Chairman, Equal Employment Opportunity Commission.

[FR Doc.76-38213 Filed 12-28-76;8:45 am]

DEPARTMENT OF THE TREASURY

Fiscal Service

[31 CFR Part 223]

SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

Proposed Rulemaking

The Department of the Treasury proposes to amend its regulations at 31 CFR Part 223 (also appearing as Treasury Department Circular No. 297) governing surety companies doing business with the United States, to accomplish the following purposes.

1. To clarify regulations that are subject to misinterpretation and to update the regulations in light of current practices.

2. To remove the only technical requirements contained in Part 223. These requirements will be placed in the Treasury's Annual Letter to Executive Heads of Surety Companies. Also, to reflect the Department's long standing procedure for valuing assets and liabilities in accordance with the instructions contained in Treasury's Annual Letter.

3. To allow the quarterly statement form of the N.A.I.C., (when modified to conform to the Secretary of the Treasury's requirements) to be substituted for Treasury's quarterly statement form.

4. To clearly indicate that one or more companies holding certificates of authority as acceptable sureties or acceptable reinsuring companies may reinsure liabilities on excess risks running to the United States.

5. To define Treasury's long standing procedure for determining paid up capital and surplus for Treasury rating purposes.

6. To clarify Treasury's position on claims payment and to indicate that a copy of the bond should be included when an agency makes a report of a company's failure to pay a claim.

7. To revise its schedule of fees to recover costs related to services performed for, and special benefits conferred upon, surety companies by the Department. The services performed and benefits conferred are in connection with the Fiscal Service's maintenance and publication of an annual listing (Treasury Department Circular No. 570) of surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties or reinsurers on Federal bonds. The revised fees are proposed for adoption pursuant to 31 U.S.C. 483a, the user charge statute, and Office of Management and Budget Circular No. A–25, as amended, entitled User Charges.

Accordingly, notice is hereby given pursuant to 5 U.S.C. 553, that the Secretary of the Treasury is considering the adoption, under authority of 6 U.S.C. 6–13, 5 U.S.C. 301 and the Act of August 31, 1951, 65 Stat. 290 (31 U.S.C. 483a), of the following revisions to Part 223 of Subchapter A, Chapter II of Title 31 of the Code of Federal Regulations.

§ 223.3 [Amended]

1. In § 223.3: Amend "(a) If, from the evidence submitted in the manner and form herein required * * *" to read "(a) If, from the evidence submitted in the manner and form herein required, subject to the guidelines referred to in § 223.9 * * *"

2. Section 223.7 is amended to read:

§ 223.7 Investment of capital and assets.

The cash capital and other funds of every such company must be safely invested in accordance with the laws of the State in which it is incorporated and will be valued on the basis set forth in § 223.9. The Secretary of the Treasury will periodically issue instructions for the guidance of companies with respect to investments and other matters. These guidelines may be updated from time to time to meet changing conditions in the industry.

3. In § 223.8(a): Amend "Secretary of the Treasury" to read "Assistant Comptroller for Auditing" in the first sentence. The remaining sentences of § 223.8 (a) are amended to read:

§ 223.8 Financial reports.

(a) * * * On or before the last days of April, July and October of each year, every such company shall file a financial statement with the Assistant Comptroller for Auditing as of the last day of the preceding month. A form is prescribed by the Treasury for this purpose. The quarterly statement form of the N.A.I.C., when modified to conform to the Treasury's requirements, may be substituted for the Treasury's form. The quarterly statement will be signed and sworn to by the company's president and secretary or their authorized designees.

* * * * *

4. Section 223.9 is amended to read:

§ 223.9 Valuation of assets and liabilities.

In determining the financial condition of every such company, its assets and liabilities will be computed in accordance with the instructions contained in the Treasury's current Annual Letter to Executive Heads of Surety Companies. However, the Secretary of the Treasury may value the assets and liabilities of such companies in his discretion. Credit will be allowed for reinsurance in all classes of risks if the reinsuring company holds a certificate of authority from the Secretary of the Treasury, or has been recognized as an admitted reinsurer in accord with § 223.12.

§ 223.11 [Amended]

5. Section 223.11(b)(2)(i) is amended to read: "(i) One or more companies holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds or one or more companies holding a certificate of authority as an acceptable reinsuring company on such bonds, or

6. In § 223.11(b)(2)(ii): Amend "Any company" to read "One or more companies."

7. In § 223.11(c)(1): Amend "of property" to read "of assets admitted by the Treasury."

8. Section 223.15 is amended to read:

§ 223.15 Paid up capital and surplus for Treasury rating purposes; how determined.

The amount of paid up capital and surplus of any such company shall be determined on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as the Secretary of the Treasury may deem necessary or proper.

§ 223.16 [Amended]

9. In § 223.16: Delete "a fidelity and" from its first sentence.

§ 223.17 [Amended]

10. In § 223.17: Amend "Whenever in the judgment of the Secretary of the Treasury a company is not complying with the requirements of 6 U.S.C. 6–13 and of the regulations in this part, he shall * * *" to read "Whenever it appears that a company is not complying with the requirements of 6 U.S.C. 6–13 and of the regulations in this part, the Secretary of the Treasury will * * *"

11. Section 223.18(a) is amended to read:

§ 223.18 Performance of agency obligations.

(a) Every company shall promptly honor its bonds naming the United States or one of its agencies or instrumentalities as obligee. If an agency's demand upon a company on behalf of the agency or laborers, materialmen, or suppliers (on payment bonds), for payment of a claim against it is not settled to the agency's satisfaction, and the agency's review of the situation thereafter establishes that the default is clear and the company's refusal to pay is not based on adequate grounds, the agency may make a report to the Secretary of the Treasury, including a copy of the subject bond, the basis for the claim against the company, a chronological resume of efforts to obtain payment, a statement of all reasons offered for nonpayment, and a statement of the agency's views on the matter.

§ 223.20 [Amended]

12. Section 223.20 is amended by adding "without further notice" at the end of its last sentence.

§ 223.21 [Amended]

13. In § 223.21: Amend "If, after one year from the date of the expiration or the revocation of the certificate of authority, as the case may be * * *" to read "If, after one year from the date of the expiration or the revocation of the certificate of authority, under § 223.20 * * *"

§ 223.22 [Amended]

14. In § 223.22: Amend "effective January 31, 1976" to read "effective January 31, 1977."

15. Sections 223.22(a) and 223.22(c) are amended to read:

§ 223.22 Schedule of Fees.

* * * * *

(a) For examining a company's application for a certificate of authority as an

acceptable surety on Federal bonds, or for examining a company's application for a certificate of authority as an acceptable reinsuring company on such bonds: $960 (see § 223.2).

* * * * *

(c) For determining the continuing qualifications for annual renewal of a company's certificate of authority: $640 (see § 223.3).

* * * * *

Prior to adoption of the proposed amendments, consideration will be given to written views or arguments submitted to the Commissioner, Bureau of Government Financial Operations, U.S. Department of the Treasury, Washington, D.C. 20226, and received on or before January 28, 1976. Copies of comments received will be available for inspection and copying upon request in accordance with the Treasury's rules entitled "Disclosure of Records" (31 CFR Part I, Subpart A). The Bureau of Government Financial Operations has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 22, 1976.

D. A. PAGLIAI,
Commissioner.

[FR Doc.76-38106 Filed 12-28-76;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 531]

[Docket No. 76-40]

FILING OF FREIGHT AND PASSENGER RATES, FARES AND CHARGES IN THE DOMESTIC OFFSHORE TRADE, PUBLICATION AND POSTING

Further Enlargement of Time

DECEMBER 22, 1976.

Upon request of Hearing Counsel, and good cause appearing, time within which its reply to comments llash ebldefi IES its reply to comments shall be filed in this proceeding is enlarged to and including January 10, 1977. Answers to Hearing Counsel's reply shall be filed on or before January 31, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-38206 Filed 12-28-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 0, 1]

[Docket No. 21032; FCC 76-1196]

GOVERNMENT IN THE SUNSHINE

Implementation

Adopted: December 22, 1976.

Released: December 23, 1976.

1. The Government in the Sunshine Act (Pub. L. 94-409) was signed by the President on September 13, 1976. Agencies are charged with the issuance of rules implementing the Act by March 12, 1977, 180 days after the date of enactment. The Commission's proposed rules are set out below. We have also initiated consultations with the Office of the Chairman of the Administrative Conference of the United States, as required by the Act.

2. Pursuant to procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on the proposed rules on or before January 27, 1977. Reply comments are not requested. Comments will be available for inspection in the Commission's Broadcast and Dockets Reference Room at its headquarters in Washington, D.C. All relevant and timely comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into account other relevant information before it in addition to the comments invited by this Notice. In accordance with the provisions of § 1.419 of the Rules and Regulations, an original and 5 copies of all comments and other materials shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

Part 0 and 1 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. Subpart F of Part 0 is added to read as follows:

Subpart F—Meeting Procedures

Sec.
0.601 Definitions.
0.602 Open meetings.
0.603 Basis for closing a meeting to the public.
0.605 Meeting procedures.

Subpart F—Meeting Procedures

§ 0.601 Definitions.

For purposes of this section:

(a) The term "agency" means (1) the Commission, (2) a Board of Commissioners (see § 0.212), (3) the Telecommunications Committee, (see § 0.215), (4) the Subscription Television Committee (see § 0.216), and (5) any other group of Commissioners hereinafter established by the Commission on a continuing or ad hoc basis and authorized to act on behalf of the Commission.

(b) The term "meeting" means the deliberations among a quorum of the Commission, a Board of Commissioners, or a quorum of a committee of Commissioners, where such deliberations determine or result in the joint conduct or disposition of official agency business, except that the term does not include deliberations to decide whether a meeting should be open or closed. (The term includes conference telephone calls, but does not include the separate, sequential consideration of Commission business by Commissioners.) For purposes of this subpart, each item on the agenda of a meeting is considered a meeting or a portion of a meeting.

§ 0.602 Open meetings.

(a) All meetings shall be conducted in accordance with the provisions of this subpart.

(b) Except as provided in § 0.603, every portion of every meeting shall be open to public observation. Observation does not include participation or disruptive conduct by observers, and persons engaging in such conduct will be removed from the meeting.

§ 0.603 Basis for closing a meeting to the public.

An agency or advisory committee meeting may be closed to the public, and information pertaining to such meetings which would otherwise be disclosed to the public under § 0.605 may be withheld, if the agency determines that an open meeting or the disclosure of such information is likely to:

(a) Disclose matters that (1) are specifically authorized under criteria established by executive order to be kept secret in the interest of national defense or foreign policy; and (2) are in fact properly classified pursuant to such executive order (see § 0.457(a));

(b) Relate solely to the internal personnel rules and practices of an agency (see § 0.457(b));

(c) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld (see § 0.457(c));

(d) Disclose trade secrets and commercial or financial information obtained from a person and priviledged or confidential (see § 0.457(d));

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (see § 0.457(f));

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contined in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligency investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

[1] Commissioner Hooks concurring in the result; Commissioner Quello absent.

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except where the agency has already disclosed to the public the content or nature of the disclosed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures specified in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for hearing.

§ 0.605 Meeting procedures.

(a) If an agency, by its staff, determines that a meeting should be open to the public, it will, at least one week prior to the meeting, announce in writing the time, place, and subject matter of the meeting, that it is to be open to the public, and the name and phone number of an official designated to respond to requests for information about the meeting. The announcement provided for in this paragraph and in paragraphs (e), (f) and (g) of this section will be submitted for publication in the FEDERAL REGISTER on or before the date on which the announcement is made.

(b) The agency will vote on the question of closing a meeting to the public:

(1) If the staff recommends that the meeting be closed and one member of the agency requests that a vote be taken; or

(2) If a person whose interests may be directly affected by a meeting requests the agency to close the meeting for any of the reasons listed in § 1.603 (e), (f) or (g), and a member of the agency requests that a vote be taken.

(c) When a vote is taken, a separate vote will be taken for each meeting proposed to be closed to the public and with respect to any information proposed to be withheld from the public. However, a single vote may be taken with respect to a series of meetings proposed to be closed to the public, and with respect to information concerning such series of meetings, if each meeting involves the same particular matters and is scheduled to be held no later than 30 days after the first meeting in the series.

(d) A meeting will be closed to the public pursuant to § 0.603 only by vote of a majority of the entire membership of the agency. The vote of each participating Commissioner will be recorded. No Commissioner may vote by proxy.

(e) (1) If the question of closing a meeting is considered by the agency but no vote is taken, the agency will, at least one week prior to the meeting, announce in writing the time, place and subject matter of the meeting, that it is to be open to the public, and the name and phone number of an official designated to respond to requests for information about the meeting.

(2) If a vote is taken, the agency will, in the same announcement and within one day after the vote, make public the vote of each participating Commissioner.

(3) If the vote is to close the meeting, the agency will also, in that announcement, set out a full written explanation of its action and a list of all persons other than Commission personnel expected to attend the meeting, together with their affiliations.

(4) If the meeting is closed, the agency may withhold and not announce the information specified in paragraphs (e) (1), (2) and (3) of this section, if and to the extent that it finds that such action is justified under § 0.603. Information will be withheld only by a vote of a majority of the entire membership of the agency, which will be recorded and will include no vote by proxy.

(f) If the prompt and orderly conduct of agency business should require that a meeting be held less than one week after the announcement provided for in paragraph (e) for this section, the agency will announce, at the earliest practicable time, the time, place, and subject matter of the meeting, and whether it will be open or closed to the public. Such action will be taken only by a majority vote of the entire membership of the agency.

(g) If, after the announcement provided for in paragraphs (a) and (e) of this section, the time or place of a meeting is changed or the meeting is cancelled, the agency will announce the change at the earliest practicable time. The subject matter or the determination to open or close the meeting will be changed only if (1) a majority of the entire membership of the agency determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (2) the agency publicly announces the change and the vote of each member upon such change at the earliest practicable time.

(h) For every meeting closed under § 0.603, the General Counsel will certify that the meeting may be closed to the public and will state each relevant provision of § 0.603, and the presiding officer will prepare a statement setting out the time and place of the meeting and the names of those other than Commission personnel who were present. Except as otherwise provided in paragraph (e) (4) of this section, these papers will also state the subject matter of the meeting. The certification and statement will be retained by the Secretary in a public file.

(i) (1) The agency will maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting closed to the public, except that in a meeting closed pursuant to paragraph (h) or (j) of § 1.603, the agency may maintain minutes in lieu of a transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considered in connection with any item will be identified in the minutes.

(2) If the agency has determined that the meeting may properly be closed to the public, the transcript, recording or minutes shall not be made available to the public until such future time, if any, as it is determined, upon request, that the reasons for closing the meeting no longer pertain: *Provided, however,* That any separable portion of a transcript, recording or minutes will be made promptly available to the public if that portion does not contain information properly withheld under § 0.603.

(3) If the transcript, recording or minutes are made available to the public, copies of the transcript or minutes, or a transcription of the recording disclosing the identity of each speaker, will be furnished at the actual cost of duplication or transcription.

(4) The agency will maintain a copy of the transcript, recording or minutes for a period of two years after the meeting, or until one year after conclusion of the proceeding to which the meeting relates, whichever occurs later.

FREEDOM OF INFORMATION RULES

2. In § 0.457, a sentence is added at the end of the Introductory text preceding paragraph (a), and the portion of paragraph (c) preceding subparagraph (1) is revised, to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

Requests to inspect or copy the transcripts, recordings or minutes of agency or advisory committee meetings will be considered under § 0.603 rather than under the provisions of this section.

* * * * *

(c) Materials that are specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552(b)), provided that such statute (1) requires that the materials be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of materials to be withheld. The Commission is authorized under the following statutory provisions to withhold materials from public inspection.

* * * * *

EX PARTE RULES

3. Section 1.1223 is revised to read as follows:

§ 1.1223 Presentations prohibited in restricted application proceedings prior to their designation for hearing.

As provided in § 1.1203(b), certain application proceedings are "restricted" following the submission of a petition to deny or public notice of the filing of a

mutually exclusive application. Except as provided in § 1.1227, no interested person shall, directly or indirectly, make or attempt to make any oral or written ex parte presentation to decision-making Commission personnel concerning such a proceeding. Nor, in the absence of public notice, shall such an ex parte presentation be made, directly or indirectly, by an interested person having actual knowledge that a mutually exclusive application has been filed. No interested person outside the Commission who knows that a proceeding will be designated for hearing shall make any ex parte presentation concerning that proceeding.

4. Section 1.1225(b) is revised to read as follows:

§ 1.1225 Solicitation of ex parte presentations.

* * * * *

(b) Except as provided in § 1.1227, decision-making personnel shall not make or cause to be made, solicit or encourage ex parte presentations from any person, and shall not entertain ex parte presentations which are made to them.

5. Section 1.1251(a) is revised to read as follows:

§ 1.1251 Sanctions.

(a) *Parties.* (1) Upon notice and hearing, any party to a restricted proceeding who directly or indirectly makes any unauthorized ex parte presentation, who encourages or solicits others to make any such presentation, or who fails to advise the Executive Director of the facts and circumstances concerning an unauthorized ex parte presentation (see § 1.1245), may be disqualified from further participation in that proceeding. Such alternative or additional sanctions as may be appropriate may be imposed.

(2) To the extent consistent with the interests of justice and the public, a party who has made an ex parte presentation may be required to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected.

[FR Doc.76-38178 Filed 12-28-76;8:45 am]

[47 CFR Part 15]

[Docket No. 20990; RM-1617; RM-2152; RM-2223.]

REMOTE CONTROL AND SECURITY DEVICES

Order Extending Time to File Comments

Adopted: December 16, 1976.

Released: December 21, 1976.

In the matter of amendment of Part 15 of FCC Rules to provide for remote control and security devices.

1. On November 24, 1976, the Commission released a Notice of Proposed Rulemaking in the above entitled matter (41 FR 52705, December 1, 1976). Since that time requests for extensions of time to file comments have been received from the following: (1) Security Equipment Industry Association and Linear Corporation, filed December 7, 1976; (2) Door Operator and Remote Controls Manufacturers Association, filed December 9, 1976; (3) Stanley Vemco, filed December 13, 1976; (4) A. E. Moore Company, Inc., filed December 13, 1976; (5) McKee Door Company, filed December 14, 1976; (6) General Aluminum Corporation, filed December 14, 1976; and (7) American Power-Unit Corporation, filed December 15, 1976.

2. Because of the technical nature of this proceeding, which would require testing and other studies by those commenting; the importance of this proceeding to both the manufacturers and consumers; and, the Commission's desire to have the most definitive responses possible, an extension of time to March 28, 1977, for filing Comments and April 28, 1976, for filing Reply Comments is hereby ordered pursuant to the authority granted by § 0.241(d) of the Commission's Rules.

HARRY FINE,
Acting Chief Engineer.

[FR Doc.76-38179 Filed 12-28-76;8:45 am]

[47 CFR Part 73]

[Docket No. 21022 RM-2723]

FM BROADCAST STATIONS; TABLE OF ASSIGNMENTS

Mechanicsville, Va.

Adopted: December 16, 1976.

Released: December 22, 1976.

In the Matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Mechanicsville, Virginia).

1. *Petitioner, Proposal and Comments:* (a) *Notice of Proposed Rule Making* is given concerning amendment of the FM Table of Assignments (Section 73.202(b) of the Commission's Rules and Regulations) as concerns Mechanicsville, Virginia.

(b) *A Petition for Rule Making*[1] was filed on behalf of Crusade for Christ, Inc. ("Crusade") of Norfolk, Virginia, seeking the assignment of Channel 224A as a first FM assignment to Mechanicsville. Crusade also submitted "Comments in Support of Proposed Rule Making." No other responses have been recevied.

2. *Community Data:* (a) *Location:* Mechanicsville (pop. 5,189[2]) is located in Hanover County, Virginia (pop. 37,479), approximately 16 kilometers (10 miles) northeast of Richmond, Virginia.

(b) *Local Broadcast Service:* Mechanicsville has no local aural services. The petitioner indicates that the proposed 60 dBu service area is now being served on a fulltime basis by five commercial FM stations and, on a daytime basis, by five AM stations. Varying portions of this service area are served by five other AM stations during daytime hours. Interference-free nighttime AM service is available from only one station in 55% of the proposed service area, two stations in 18%, and three or more stations in the remaining portion of the proposed service area.

(c) *Economic Data:* Principal industries include farming, tobacco, textiles and wood products. Retail sales in Hanover County totalled $99 million in 1975 on total personal income of $219 million. Per capita income was approximately $4,500.

3. *Preclusion Considerations:* Inasmuch as the petition proposes the assignment of a first Class A channel to a community located in close proximity to a larger city having a number of FM assignments, a preclusion study was required.[3] The study submitted by the petitioner and verified by a staff engineering analysis, indicates that only cochannel preclusion will result, affecting a small area immediately northeast of Mechanicsville. The proposed assignment can be made in compliance with technical and mileage separation requirements.

4. *Additional Considerations:* The potential benefits to be derived from the availability at Mechanicsville of a first local FM service provide sufficient basis for the issuance of a notice of proposed rule making. However, because of the proximity of Mechanicsville to Richmond, and the fact that the station's 1 mV/m contour apparently would cover all of Richmond, petitioner should provide documentation of its intent to serve Mechanicsville rather than Richmond.

5. *Proposed Amendment to the FM Table of Assignments:* The Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the Commission's Rules and Regulations) with regard to the community of Mechanicsville, Virginia, as follows:

City	Channel No.	
	Present	Proposed
Mechanicsville, Va.		224A

6. *Authority:* The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

7. *Comments and Replies:* Interested parties may file comments on or before

[1] Public Notice of filing of the petition was issued on July 14, 1976 (Rept. No. 989).

[2] Unless otherwise indicated, all population statistics are cited from the 1970 U.S. Census. Crusade notes that the population of Mechanicsville in 1976 is now estimated to be 8,071 persons.

[3] Policy to Govern FM Channel Assignments, 8 F.C.C. 2d 79 (1967).

January 31, 1977, and reply comments on or before February 22, 1977.

FEDERAL COMMUNICATIONS COMMISSION
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the notice of proposed rule making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comment. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Numbers of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc.76-38180 Filed 12-28-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 232]

[Docket No. PB-4, Notice 3]

INSTALLATION, INSPECTION, TESTING AND MAINTENANCE OF POWER OR TRAIN BRAKES

Withdrawal of Advance Notice of Proposed Rulemaking

On March 16, 1971, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER (36 FR 4994) a notice soliciting public participation and comment on the need for a revision of those portions of 49 CFR Part 232, Railroad Power Brakes and Drawbars, concerning power brakes. The public was also invited to comment on the nature of the revisions considered necessary or desirable to resolve any difficulties arising under existing provisions.

Several comments were received in response to that notice. Most of the comments concerned minor or technical revisions to the existing rules. One commenter, the Association of American Railroads (AAR), submitted a comprehensive and detailed proposal for the amendment and recodification of the pertinent portions of 49 CFR 232.

On July 26, 1974, FRA published in the FEDERAL REGISTER (39 FR 27331) an advance notice of proposed rulemaking (ANPRM) soliciting comments on the amendments proposed by AAR. Inadvertently, the text of the proposed amendments and the explanatory notes filed by the AAR were not published as an appendix to that notice. On August 7, 1974, a correction was published in the FEDERAL REGISTER (39 FR 29441) containing the text of the amendments proposed by AAR.

Only the AAR and the Congress of Railway Unions (CRU) submitted comments directly to FRA in response to the ANPRM. However, many members of the Brotherhood of Railway Carmen of the United States and Canada (BRCUS &C) wrote Congressmen and Senators, who in turn referred their comments to FRA. Without exception, the comments of the CRU and the members of BRCUS&C were in opposition to the adoption of the AAR proposal.

After carefully considering this proposal and all of the comments received during this proceeding, FRA has determined that the AAR proposal does not contain sufficient supportive data regarding the impact its adoption would have upon safety. Adoption of the AAR proposal in the absence of such supportive data would contravene Section 9 of the Safety Appliance Acts, 45 U.S.C. § 9, which provides, in part, that "changes in the rules, standards, and instructions for the installation, inspection, maintenance and repair of all power or train brakes shall be promulgated solely for the purpose of achieving safety."

Adoption of the AAR proposal would result in a wholesale relaxation of existing safety requirements. For example, the AAR proposed to increase the distance between intermediate inspections of trains from points not more than 500 miles apart to points not more than 1,000 miles apart. This proposal is not supported by data indicating that such an increase would maintain the level of safety now achieved by the 500 mile inspection requirement.

The AAR proposal would also make initial terminal inspections and tests of air brakes optional, by providing that "all trains may be given inspection and test where train is originally made up (Initial Terminal)." Initial terminal inspections and tests are presently mandatory. In addition, the AAR proposal would also eliminate the present requirement that initial terminal road train air brake tests be conducted at point of interchange. Here again the AAR has suggested the relaxation of presently mandatory safety requirements but has failed to supply supportive data indicating that safety would not be diminished.

FRA believes that amendments such as those proposed by AAR, which affect the safety of the general public and railroad employees, should be predicated upon the results of tests conducted under controlled and supervised conditions. The record compiled in this proceeding does not contain the results of such tests. In light of that fact, FRA has determined that rulemaking action on the proposed amendments is not appropriate at the present time, and that this proceeding should be terminated until such time as the necessary test data can be compiled to support amendments to the current rules. Approval to conduct tests to compile this data may be sought in accordance with the provisions of 49 CFR Part 211. The withdrawal of this proposal does not preclude FRA from issuing similar notices in the future or commit FRA to any course of action.

In consideration of the foregoing, the notices published by FRA in the FEDERAL REGISTER on March 16, 1971 (36 FR 4994), July 26, 1974 (39 FR 27331), and August 7, 1974 (39 FR 28441) concerning proposed amendments to 49 CFR Part 232, Railroad Power Brakes and Drawbars, are hereby withdrawn and this proceeding is terminated.

This notice is issued under the authority of the Power or Train Brakes Safety Appliance Act of 1958 (72 Stat. 86; 45 U.S.C. § 9) and § 1.49(c) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.49(c)).

Issued in Washington, D.C. on December 22, 1976.

ASAPH H. HALL,
Administrator.

[FR Doc.76-38152 Filed 12-28-76;8:45 am]

[49 CFR Part 417]

[Docket No. RSOR-2, Notice 4]

RAILROAD "STOP-AND-PROCEED" PROCEDURES

Termination of Rulemaking Proceeding

BACKGROUND

On August 9, 1973, the Federal Railroad Administration (FRA) published an advance notice of proposed rulemaking (38 FR 21503) stating that it was studying possible courses of action to address the safety problems highlighted by those accident cause codes generally categorized by FRA as "human factor" accidents. Approximately one-third of all reportable train accidents are now attributable to human factor causes which generally involve noncompliance with existing carrier operating rules. The National Transportation Safety Board also recognized this area of human factor accidents as one in need of FRA consideration. That agency conducted a special study, "Signals and Operating Rules as Causal Factors in Train Accidents" (Report No. NTSB-RRS-71-3), which identified the ambiguous construction and varying interpretations of existing operating rules as a significant safety hazard.

In the advance notice of proposed rulemaking, FRA requested comments relative to the advisability of developing uniform minimum standards for operating rules governing the operation of trains and other railroad operating equipment. As a starting point, FRA chose three areas of concern: (1) failure to operate trains in accordance with restrictive conditions; (2) excessive speed within yard limits; and (3) failure of train crew members to provide adequate flag protection when a train is operated under circumstances in which it may be overtaken by another train. Four specific operating rules contained in the Association of American Railroad's Standard Code of Operating Rules were identified for specific consideration in the development of minimum Federal standards in these three areas. These rules are: Rule 34, calling of signals; Rule 93, operation of trains within yard limits; Rule 99, protective flagging; and Rule 291, stop-and-proceed signals (See AAR, Standard Code of Operating Rules). After analyzing the comments received in response to the advance notice of proposed rulemaking, the FRA decided to proceed with rulemaking with respect to Rule 291, stop-and-proceed signals, and to defer, temporarily, action on the remaining three rules.

AAR Rule 291 provides that a train must come to a full stop at a "stop-and-proceed" signal, and then may enter the block governed by the signal, proceeding at restricted speed, prepared to stop short of a train, obstruction, or switch not properly lined. A note to Rule 291 provides that "railroads desiring to avoid stopping trains may arrange accordingly" in their book of operating rules or otherwise. Several carriers presently operate under a permissive provision which allows a train crew to pass such a signal without stopping provided the train is proceeding at restricted speed, prepared to stop short of another train, obstruction, or switch not properly lined. On March 31, 1975, a notice of proposed rulemaking (NPRM) setting forth proposals for mandatory procedures for train crews to follow when they encounter a "stop-and-proceed" signal was published (40 FR 14338).

Written comments were received from nine commenters expressing opinions with respect to the proposed procedures. Six of the commenters either questioned the determination as to the need for such a Federal rule or opposed the specific procedures included in the notice on various grounds. Specifically, these commenters alleged that their operating experience did not confirm the presumption that the use of a permissive rule allowing train crews to pass such a signal without coming to a full stop, created an unsafe operation which resulted in a greater number of train accidents. These commenters stated that stopping the train before entering the block governed by the signal was not the important factor and would not insure accident prevention. The most important factor which guaranteed the safety of a permissive rule, they believed, was the operation of the train at a restricted speed, prepared to stop short of another train ahead, once the train entered the occupied block. Therefore, they concluded that the issuance of a rule requiring a train to be stopped before entering the block would not succeed in eliminating rear end collisions. In addition, several of these commenters noted additional safety hazards which could result from a required stop because of slack action and train separations. Generally, they felt that the uniqueness of geography and operating conditions on each carrier's property precluded the possibility of a practical universal rule. The conclusion reached by several of these commenters was that if safety problems resulting from the use of permissive signals could be identified on specific carriers, they should be addressed by rail management and labor through the established operating rules enforcement procedures of the carriers involved.

Two commenters responded favorably to the proposed procedures stating that the action of stopping a train at the signal would assure that the train would be under complete control when it then entered the occupied block. In addition, the stopping requirement would contribute to assuring that the engineer, and all crew members would maintain a vigilant lookout thus enhancing safety. The final commenter did not state a position in favor of or gainst the issuance of the regulation, but did comment on certain definitions included in the proposed rule.

In addition to these written comments, the FRA conducted a public hearing at which three individuals provided statements for the record in this proceeding. These statements questioned the advisability of the maximum "restricted speed" of 20 m.p.h. rather than the 15 m.p.h. maximum now existing on many carriers, the limitation of a minimum 1 percent ascending grade for grade signals, and the provision that trains be required to stop in areas where vandalism is prevalent and the safety of the crew is thereby endangered. Commenters at the hearing also cited the possibility of confusion resulting from conflicts between the proposed rule and other carrier operating rules and the failure of the proposal to recognize the concept of continuous cab signals used in concert with automatic block signals or used without automatic block signals.

Following an initial review and analysis of the comments and input from the public hearing, FRA decided that the record reflected sufficient disagreement as to the need for the proposed regulation to warrant referral to the Railroad Operating Rules Advisory Committee (RORAC) for additional review and recommendation. RORAC was an advisory group, made up of representatives from railroad management, labor organizations and State regulatory agencies with jurisdiction over railroads, which was created by the FRA in 1974 to advise the agency in the area of operating rules. Following their review of this docket, the Committee's consensus was that their general experience and accident data did not indicate a need for Federal regulation on this particular operating rule.

Before making a final decision in this proceeding, and because of the conflicting comments as to the safety of permissive signals, FRA conducted an analysis of train accident data for the ten year period 1965 through 1974. The data analyzed indicated that rear end train collisions, the category of statistics most likely to have a correlation with a "stop-and-proceed" regulation, have accounted for less than 1 percent of the total reportable train accidents. FRA also analyzed the accident rate for rear end collisions for those carriers who operate under a "stop-and-proceed" rule, requireing a train to come to a full stop, and those who operate under a permissive rule, allowing trains to pass such a signal at restricted speed. The accident rate was calculated on both a train mile and a gross ton mile basis. For the three most current years available (1972 through 1974) the average rate of rear end collisions per million train miles for carriers using a "stop-and-proceed" rule was .08 accidents per million train miles. For carriers who use a permissive rule, the accident rate was .05 accidents per million train miles. On the basis of rear end collisions per billion gross ton miles, carriers with a "stop-and-proceed" rule experienced .3 accidents per billion gross ton miles, while those with a permissive rule experienced .2 accidents per billion gross ton miles. These statistics do not

indicate that there is a significant safety advantage in railroad operations which require crews to bring a train to a complete stop at a "stop-and-proceed" signal. In fact, the statistics indicate a slightly better safety performance for those carriers who do not require a train to stop.

Finally, FRA analyzed data collected through its field investigations of rear end collisions during the period from January 1974 through November 1976. Nine of these cases involved incidents in which the train crew complied with a carrier's "stop-and-proceed" rule by coming to a full stop for a signal displaying a "stop-and-proceed" aspect before entering the next block. The collision, in each of these cases, was determined to have been caused by the failure of the crew to operate in accordance with the restricted speed rule once the movement was resumed after having come to the complete stop at the signal. Therefore, it appears that the requirement of a mandatory stop rule as proposed in this proceeding, would not significantly add to the safety of train operations by assuring the prevention of rear end collisions.

With respect to the "proceed" aspect of the rule, that which gives the train crew authority to enter the block governed by the signal, FRA has found that carriers having either a "stop-and-proceed" rule or a permissive rule all require a movement in the block governed by the signal to be made at a restricted speed, prepared to stop short of an obstruction. The FRA has no basis to believe that such a rule is not being successfully applied and adequately enforced by the carriers through their established rules enforcement programs. Therefore, the FRA has decided that the addition of a uniform Federal rule requiring such moves to be made at restricted speed would not add materially to the overall safety of railroad operations.

Having analyzed the issues raised by interested parties and reviewed the pertinent train accident statistics, the FRA has determined that the need for a uniform Federal regulation such as that proposed in this proceeding can not be identified. Therefore, in compliance with the President's policy of regulatory reform and the Departmental policy to ensure that regulations issued by operating administrations will be effective in accomplishing their intended purpose and will not impose unnecessary burdens on the private sector, consumers, or on Federal, State and local governments, the FRA has determined that the "stop-and-proceed" procedures proposed in this proceeding are not likely to reduce significantly the occurrence of rear end train collisions. Consequently, the FRA has decided to terminate this proceeding without the issuance of a final regulation.

This notice is issued under the authority of section 202, 84 Stat. 971, 45 U.S.C. 431; § 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

Issued in Washington, D.C. on December 22, 1976.

ASAPH H. HALL,
Administrator.

[FR Doc.76-38153 Filed 12-28-76;8:45 am]

Urban Mass Transportation Administration

[49 CFR Part 604]

[Docket No. 76-10; Notice No. 1]

ADVANCE NOTICE OF PROPOSED RULEMAKING AND NOTICE OF PUBLIC HEARING

The Urban Mass Transportation Administration (UMTA) is considering amending Part 604 of its regulations on charter bus operations by UMTA-assisted transit operators. These regulations were issued on April 1, 1976, under section 3(f) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.) ("the UMT Act"). Under section 3(f) of the UMT Act an applicant for Federal financial assistance for the purchase or operation of buses (and/or the operation of equipment) must enter into an agreement with the Secretary of Transportation. That agreement must provide that the applicant will not engage in charter bus operations outside of the urban area within which it provides regularly scheduled mass transportation service, except pursuant to arrangements which the Secretary finds to be fair and equitable and which are designed to ensure that the Federal financial assistance will not enable the assisted operator to foreclose private operators from the intercity charter bus industry where they are willing and able to provide charter service.

The charter regulations set forth the terms which are "fair and equitable" in the opinion of the Secretary to accomplish the objectives of section 3(f) of the UMT Act. They also establish minimum conditions under which all UMTA-assisted operators can engage in charter operations in competition with private carriers and yet not foreclose the latter from the charter industry.

The basic thrust of the regulations is twofold: (1) They require grantees who engage in charter bus operations outside of their regular service area to certify that revenues generated from those operations are equal to, or greater than the cost of providing that service; and (2) They codify the "incidental" charter restrictions on the use of federally-assisted equipment which the Comptroller General set forth in his Opinion of 1966, (Comptroller General of the United States, B-160204 (December 7, 1966)).

Several issues have now emerged concerning the impact of these regulations on UMTA-assisted operators. Of particular concern has been UMTA's attempt to codify in the charter regulations its long-standing policy of allowing UMTA-assisted buses to be used in charter operations only on an incidental basis. Other issues involve the need for new charter agreements with each new application for assistance; the need to provide both actual and constructive notice to private operators; and the proper scope of the UMTA statutory mandate under section 3(f) of the UMT Act.

Comments are specifically requested on the following areas of concern:

1. Should § 604.11 which regulates the incidental use of mass transportation equipment, be deleted, modified or left unchanged?

2. Should section 3(f) agreements be a one time filing required only with an applicant's initial application for assistance under sections 3 or 5 of the UMT Act?

3. Should the requirement of providing actual notice to private operators whose service originates in a grantee's service area be deleted?

Comments are welcomed on these questions, as well as any additional recommendations for implementing section 3(f) of the UMT Act.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Chief Counsel, UMTA, Room 9320, 400 7th Street, SW., Washington, D.C. 20590.

All communications received on or before January 28, 1977, will be considered by the Administrator before taking final action on the proposed rule. All comments submitted will be available, both before and after the closing of the Rules Docket for examination by interested persons.

In addition to receiving written comment on the Rules Docket a public hearing will be held on Tuesday, January 25, 1976, from 9:30 a.m. to 12 noon and from 2:00 p.m. to 5:00 p.m. (EDT) at the DOT Headquarters, Nassif Building, 400 7th Street, SW., Washington, D.C., in Room 2230.

All persons, official bodies and organizations interested in presenting written and/or oral testimony pertaining to this hearing may register in advance of the hearing by calling 202/426-1906 or writing the Chief Counsel, UMTA (UCC-10), Room 9320, 400 7th Street, SW., Washington, D.C. 20590. Those persons, official bodies or organizations who do not register in advance will be heard after advanced registrants have been called and heard. If it is determined to be in the public interest to proceed further after consideration of the available data and comments received in response to this notice, a notice of proposed rulemaking will be issued.

This notice is issued under the authority of the Urban Mass Transportation Act, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4); 23 U.S.C. 142 (a) and (c); and 49 CFR 1.51.

Issued in Washington, D.C., on December 22, 1976.

ROBERT E. PATRICELLI,
Urban Mass Transportation Administrator.

[FR Doc.76-38162 Filed 12-28-76;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CONSUMER PRODUCT SAFETY COMMISSION

PRODUCT SAFETY ADVISORY COUNCIL

Notice of Meeting

Notice is given that a meeting of the Product Safety Advisory Council will be held on Tuesday, January 25, 1977 (9 a.m. to 5 p.m.) and Wednesday, January 26, 1977 (9 a.m. to 4 p.m.) in the Third Floor Hearing Room, 1111 18th Street, N.W., Washington, D.C.

The Advisory Council has been established pursuant to section 28 of the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1230; 15 U.S.C. 2077). The Act provides that the Commission may consult the Council before prescribing a consumer product safety rule or taking other action under the Act.

The proposed agenda includes a discussion of public participation in CPSC activities with specific emphasis on the proposed Office of Public Counsel and implementing guidelines for funding of public participation; review of the National Electronic Injury Surveillance System (NEISS), and discussion of rental of consumer products.

Persons wishing to make oral or written presentations to the Council should notify the Secretary of the Commission at least five (5) days in advance of the Advisory Council meeting. The notification should indicate the name of the individual planning to make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter to be addressed, and the approximate time requested for the presentation. The meeting is open to the public; however, space is limited. Further information concerning this meeting and final agenda may be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, phone (202) 634-7700.

Dated: December 23, 1976.

SHELDON D. BUTTS,
Acting Secretary.

[FR Doc.76-38149 Filed 12-28-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

PERISHABLE AGRICULTURAL COMMODITIES ACT-INDUSTRY ADVISORY COMMITTEE

Open Meeting

Pursuant to the Federal Advisory Committee Act, section 10(a)(2), dated October 6, 1972, notice is hereby given of a meeting of the Perishable Agricultural Commodities Act-Industry Advisory Committee on Saturday, February 5, 1977, at 9:00 a.m., Cottonwood Room, Hyatt Regency Hotel, Houston, Texas.

The purpose of the meeting is to discuss policies and procedures relating to the administration of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a et. seq.). The meeting will be open to the public.

The names of committee members, agenda, summary of the meeting and other information pertaining to the meeting may be obtained from Floyd F. Hedlund, Director, Fruit and Vegetable Division, Agricultural Marketing Service, Room 2077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone 202-447-4722.

Dated: December 22, 1976.

DONALD E. WILKINSON,
Administrator.

[FR Doc.76-38145 Filed 12-28-76;8:45 am]

Farmers Home Administration

[Notice of Designation No. A419]

MISSISSIPPI

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in certain Mississippi Counties as a result of various adverse weather conditions shown in the following chart:

MISSISSIPPI

County	Disaster	Incidence periods
Attala	Below normal temperatures.	Apr. 20 through June 13, 1976.
	Drought	July 5 through Sept. 8, 1976.
	Fall frost	Oct. 17, 1976.
	Fall freeze	Oct. 21, 1976.
Benton	Fall frost	Oct. 18, 1976.
	Fall freeze	Oct. 26 through Oct. 27, 1976.
DeSoto	Cold wet spring.	Apr. 1 through June 12, 1976.
	Drought	July 2 through Sept. 8, 1976.
Holmes	Below normal temperatures.	Apr. 26 through June 23, 1976.
	Drought	July 4 through Aug. 28, 1976.
	Freeze	Oct. 18, 1976.
Montgomery	Cold wet spring.	Apr. 1 through May 31, 1976.
	Drought	July 4 through Oct. 1, 1976.
	Freeze	Oct. 20, 1976.
Pontotoc	Below normal temperatures.	Apr. 1 through June 8, 1976.
	Drought	June 15 through Aug. 25, 1976.
Smith	do	July 25 through Nov. 9, 1976.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3 (b) including the recommendation of Governor Cliff Finch that such designation be made.

Applications for emergency loans must be received by this Department no later than February 14, 1977, for physical losses and September 14, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas make it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 20th day of December 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.76-37966 Filed 12-28-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 30221]

DOD CONTRACT-ELIGIBLE CERTIFICATION CASE

Prehearing Conference

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on January 17, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room C, North Universal Building, 1875 Connecticut Avenue, Washington, D.C., before Administrative Law Judge Burton S. Kolko.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before January 6, 1977, and the other parties on or before January 13, 1977. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-38198 Filed 12-28-76;8:45 am]

[Order 76-12-131; Docket Nos. 22859, 26838]

EASTERN AIR LINES, INC.

Freight Rate Investigations; Suspensions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23rd day of December, 1976.

By tariff revisions [1] marked to become effective December 27, 1976, Eastern Air Lines, Inc. (Eastern) proposes, with certain exceptions, systemwide increases of 6 percent in its freight rates and charges. The chief exceptions are the minimum charge per shipment for standard service, which would be raised by 8 percent (from $13 to $14), and certain northbound rates from Florida origins which would be raised by 10 percent, but not to exceed the southbound rates. In addition, Eastern proposes to extend its density discount rates until December 27, 1977.[2]

The carrier asserts, inter alia, that the the purpose of its proposed increases is to obtain needed revenue to compensate for deficient rate levels and rising costs; and that even with these increases, the carrier will not achieve a 12-percent rate of return on freight investment. As a result of the proposed increases, Eastern estimates annual revenue increases of about $3 million. Eastern asserts that its proposed extension of density discount rates is a defensive measure to match a similar filing by Delta Air Lines, Inc. (Delta).

The proposed rates all come within the scope of either the Domestic Air Freight Rate Investigation (DAFRI), Docket 22859, or the Priority Reserved Air Freight Rates Investigation (PRAFRI), Docket 26838, and their lawfulness will be determined in those proceedings. The issue before the Board is whether to suspend the rates or to permit them to become effective pending the decisions in those investigations.

Upon consideration of all relevant factors, the Board finds that the proposed $14 minimum charge per shipment for markets with lengths of haul less than about 497 miles, as specified in Appendix A hereto, should be suspended because it would exceed industry-average costs (including return on investment) of carrying air freight in such markets.[3] The corresponding express minimum charge of $18.20 should also be suspended since, if permitted to become effective, it would exceed the recommended 30 percent premium over the standard service charge in these markets. The Board will permit the remaining portions of the proposed rate increases to become effective as the rates do not appear excessive. Our approval of the extension of density discount rates is consistent with our recent action taken with regard to similar rates for Delta, Order 76-12-66.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. Pending hearing and decision by the Board, the charges and provisions described in Appendix A [4] hereto are suspended, and their use deferred to and including March 26, 1977, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special permission of the Board; and

2. Copies of this order shall be filed with the tariffs and served upon Eastern Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronatics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-38200 Filed 12-28-76;8:45 am]

[Docket 29759]

FUEL SURCHARGE

Final Action on Revised Procedures for Part 288

DECEMBER 22, 1976.

By Notice, dated September 8, 1976, the Board expressed an intention to change its procedure and methodology for developing fuel-surcharge amendments applicable to the minimum rates established in Part 288 of the Economic Regulations (14 CFR Part 288) for air transportation services performed by air carriers for the Department of Defense (DOD) and procured by the Military Airlift Command (MAC).[1] Under the revised procedure and methodology, the fuel-surcharge amendments would be issued on an ad hoc basis when fuel price changes require a 0.75 percent or more adjustment to the current minimum rates, either upward or downward. Further, such adjustments would be based on fuel cost and consumption data provided in Schedule P-12(a)[5] of the Form 41 reports (14 CFR Part 241) for military charter services performed.

Comments in response to the Notice were filed jointly by five carriers,[2] Northwest Airlines, Inc. (Northwest), Pan American World Airways, Inc. (Pan Am), Saturn Airways, Inc. (Saturn), Trans International Airlines, Inc. (TIA), and DOD. A reply to Saturn's comments was also filed by DOD. All comments and the reply have been carefully considered and all contentions not otherwise disposed of herein are rejected.

The responses were almost unanimously in favor of basing the fuel-surcharge computation on the fuel cost and consumption data reported monthly in Schedule P-12(a) reports.[3] The DOD and the joint carriers request that the Board continue the quarterly adjustment procedure. Northwest, Pan Am, Saturn,[4] and Trans International concurred with the proposed ad hoc adjustment.

DOD and the joint carriers assert that the present stabilization of fuel prices is not expected to continue and that substantial fuel price increases are anticipated in the near future. They also feel that the proposed 0.75 percent rate impact bench mark for triggering an ad hoc fuel surcharge adjustment represents a substantial financial impact and could impose an undue burden to the carriers or the DOD, depending on the direction of fuel price movement. The joint respondents allege that the prospective enormous reequipment program requires that the industry's profit position be diligently maintained and that they should not be faced with the potential profit absorption inherent in the ad hoc fuel surcharge procedure. While they believe that the foregoing circumstances justify the retention of the quarterly procedure, the carriers also indicate that if the ad hoc approach is adopted, it should apply only to commercial fuel prices and that the military-supplied fuel price changes should be made directly rate-responsive through an automatic surcharge provision.

Upon consideration of the comments, we have determined for the reasons set forth herein and in the Notice to eliminate quarterly fuel surcharge adjustments and to adopt instead the ad hoc adjustment procedure set forth in the Notice with one modification. We have adopted Pan American's recommendation and converted the minimum price change needed to trigger the adjustment provision from a percentage impact on

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[1] Revisions to Airline Tariff Publishing Company, Agent, Tariffs C.A.B. Nos. 169 and 227.

[2] Density discount general commodity rates are applicable on traffic with density of at least 25 pounds per cubic foot, and are equal to 60 percent of the otherwise applicable general commodity rate.

[3] Industry-average costs recommended by the administrative law judge in DAFRI, revised for cost increases through the 12 months ended June 1976. The minimum charges suspended exceed the costs of a 35-pound shipment, the estimated size of an average shipment below 100 pounds in various markets. This standard for small shipment rates has been applied in Orders 76-12-66 and 76-11-14.

[4] Filed as part of the original document.

[1] The current minimum rates were established in ER-959, adopted July 15, 1976, for Logair and Quicktrans services and in ER-962, adopted July 27, 1976, for foreign and overseas services. Fuel surcharge amendments were respectively fixed by ER-971 and ER-972, adopted October 1, 1976, under the then-established procedure and methodology for developing such amendment.

[2] Airlift International, Inc., Capitol International Airways, Inc., The Flying Tiger Line Inc., Overseas National Airways, Inc., and World Airways, Inc.

[3] DOD indicated that the F-12(a) data could be investigated as an alternative to the B-66 reports. We believe that the analysis and conclusion on page 4 of the Notice adequately covered this matter. DOD has not challenged the Board's conclusion nor advanced any reasons for pursuing the analysis further.

[4] Saturn's primary concern is for changes in prices of fuel obtained from military sources. It indicated that future Logair and Quicktrans contracts would contain provisions for military fuel to be supplied at the prices upon which the rates set forth in ER-962 were based. This was confirmed by DOD. Accordingly, Saturn contends that any price differentials would be adjusted internally within DOD, without requiring involvement by the carriers or the Board, obviating the need for fuel surcharge adjustments to the domestic MAC rates.

the rates to a fixed change in the price of fuel per gallon. Accordingly, as modified herein, the procedure will be for the Board to issue fuel surcharge amendments when the average price of fuel has increased or decreased by one cent or more per gallon over the per gallon average reflected in the last surcharge amendment. This modification involves no substantive change to the adjustment methodology set forth in the Notice but merely provides a simplified procedure by which fuel price changes can be identified and necessary adjustments based upon those prices can be made. Finally, the station reports of fuel costs and consumption to the Bureau of Economics shall be eliminated as proposed in the Notice; and hereinafter, the MAC rate fuel surcharge amendments shall be based upon reported fuel cost and consumption data in the Form 41 Schedule P-12(a).

The joint carriers and MAC have apparently misconceived the objective of the ad hoc adjustment procedure we have determined to adopt. The practice of surcharging the MAC rates for fuel was implemented as a short-term response to ameliorate the financial burden of abnormally escalated fuel costs that could not be otherwise offset and was not intended to accommodate normal minimal movements in fuel prices. The Board was under no obligation to continue this practice once the fuel crisis that precipitated it had passed and could have discontinued these surcharge adjustments without further procedures. However, because fuel costs are subject to greater fluctuation than other cost elements, are a more significant part of the costs of performing military charters, and are separately identifiable in the carriers' reports, the Board has determined to continue surcharges, on an ad hoc basis, in order to insure that fuel price fluctuations do not result in a significant understatement or overstatement of the rates. The ad hoc procedure we now intend to follow will cover all but de minimis fluctuations in fuel prices and, with regular monitoring of fuel price changes, should insure that reasonable minimum rates are maintained.[5]

Similarly, we see no basis at this time to consider reinstatement of automatic surcharge rate adjustments for price fluctuations in military-supplied fuels as requested by several parties. The purpose of this proceeding was to establish a new procedure for dealing with MAC fuel cost fluctuations and to eliminate unnecessary reporting requirements. Automatic fuel price adjustment clauses were eliminated from foreign MAC rates in 1975[6] and from domestic MAC rates in 1976[7] and are not under consideration. Further, we believe that the ad hoc review procedure adopted herein should afford the parties adequate rate protection against prospective changes in fuel prices, including the prices of fuels obtained from military sources. On the other hand, since almost all the fuel consumed in domestic MAC services are obtained from military sources, an automatic price adjustment procedure for these services may warrant further consideration, provided that sufficient monitoring controls can be developed. In this connection, Saturn and Hawaiian Airlines, Inc. have jointly filed a petition requesting the Board to amend Part 288 to permit an internal fuel price adjustment which allegedly obviates the need for Board fuel surcharges. This petition is pending in Docket 30109 and will be disposed of in due course.

The established procedure for the issuance of fuel surcharges has been to add the fuel surcharge effective prospectively from the first day of the month following the base commercial fuel price reports by the carriers or the effective date of changes in the price for military-supplied fuel. In this way, administrative lag was reduced and the surcharge adjustments were reasonably coincidental with the changes in underlying cost. However, this same expedition may now be difficult to achieve due to the fact that the fuel data needed to make the adjustment will no be filed until the 20th of the month following the month in which the price adjustment occurred. In the event that we are unable to issue a surcharge amendment reasonably within the customary period of time after the fuel reports are filed, we shall examine our established procedure and determine whether any modifications are warranted at that time.

Northwest's assumptions are correct in its request for clarificatiton of the fuel surcharge computation methodology. The determination for surcharge adjustment would be based on a comparison of the current average price levels with those reflected in the currently-effective rate, within the base rate or as amended by the latest fuel surcharge.

The attached Appendix[8] illustrates the fuel-surcharge computation, for a hypothetical average fuel price change for the long-range MAC carriers, pursuant to the revised procedures and methodology adopted above. As set out therein, the methodology conforms to the computation techniques employed in ER-972, effective October 1, 1976, substituting the latest average fuel price reports for the "active stations" data previously used. When the latest reported weighted average fuel price per gallon[9] represents a change from that reflected in the current rate of one cent or more per gallon, each carrier's price change is converted to a measure of economic cost impact. The resulting economic cost impact is further translated into the individual carrier's impact on the currently-effective base rate, and the sum of the carrier's impact computations produces the fuel-surcharge amendment factor.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-38197 Filed 12-28-76;8:45 am]

[Dockets 21546, 22497, 23000, 23314, 23407, 24554, 27473]

JAPANESE AIRFREIGHT FORWARDER OPERATIONS

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-mentioned proceedings is assigned to be held on January 26, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room C, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Frank M. Whiting.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-38197 Filed 12-28-76;8:45 am]

[Docket 30064]

NORTHWEST AIRLINES, INC.

Complaint of Mary Lou Nemir, Assignment of Proceeding

In the matter of Northwest Airlines, Inc., enforcement proceeding and complaint of Mary Lou Nemir.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-38189 Filed 12-28-76;8:45 am]

[Docket 29355]

NORTHWEST AIRLINES, INC.

Complaint of Thomas Joseph Moore; Assignment of Proceeding

In the matter of Northwest Airlines, Inc., enforcement proceeding complaint of Thomas Joseph Moore.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

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[5] The 0.75 percent rate impact, or a price fluctuation of one cent per gallon, is considered reasonable, particularly when compared with the carriers' recent filing for increased MAC rates, which led to the institution of the current investigation by ER-962. Their request was precipitated by an alleged rate deficiency of 7.64 percent, by the carriers' computation—ten times the impact being adopted herein for ad hoc fuel surcharge purposes. Moreover, on a monthly basis, the surcharge amendment would be triggered by a fuel cost movement of approximately $90,000, an average of only $9,000 per carrier.

[6] ER-896, January 17, 1975.

[7] ER-959, July 15, 1976.

[8] Filed as part of the original document.

[9] For all of the MAC rate participating carriers.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-38188 Filed 12-28-76;8:45 am]

[Docket 29882]

PACIFIC WESTERN AIRLINES, LTD. FOREIGN AIR CARRIER PERMIT

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on January 26, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Stephen J. Gross.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before January 12, 1977.

Ordinary transcript will be adequate for the proper conduct of this proceeding.

Dated at Washington, D.C., December 22, 1976.

ROSS I. NEWMAN,
Chief, Administrative Law Judge.

[FR Doc.6-38196 Filed 12-28-6;8:45 am]

[Order 76-12-128; Docket Nos. 29936, 29937, and 25637]

SFO HELICOPTER AIRLINES, INC., ET AL

Temporary Suspension of Service and Aircraft Purchase Transaction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 22nd day of December, 1976. Application of SFO Helicopter Airlines, Inc. for temporary suspension of service on Route 103. Joint Application of British Airways Helicopters, Ltd. and SFO Helicopter Airlines, Inc. for approval of aircraft purchase transaction. Joint Application of SFO Helicopter Airlines, Inc., Trans World Airlines, Inc. and United Aircraft Corp. pursuant to section 408 of the Federal Aviation Act of 1958, as amended.

By Order 76-11-52, November 9, 1976, the Board directed all interested persons to show cause why the Board should not issue an order (1) revoking, pursuant to section 401 of the Act, the certificate of SFO Helicopter Airlines, Inc. for Route 103 and (2) granting, pursuant to section 408 of the Act, the application of SFO and British Airways Helicopters (BAH) for approval of an aircraft purchase transaction.

On November 29, 1976, SFO and Cal-Tex Helicopter Airlines, Inc. (Cal-Tex) filed joint objections to Order 76-11-52 insofar as it proposes to order that SFO's certificate for Route 103 be revoked.[1] The objectors state that Cal-Tex has been formed with the express purpose of providing certificated air transportation between various points in the San Francisco/Oakland Bay area within the area encompassed by, and pursuant to SFO's certificate and area exemption authority; consequently, Cal-Tex is presently negotiating an agreement with SFO for the acquisition of SFO's certificate and exemption authority, and its remaining assets, other than the flight equipment and spare parts which have been sold to BAH. Cal-Tex intends to seek Board approval of the transfer to it of SFO's authority preferably under show cause or other expedited procedures.[2] SFO submits that its certificate and attendant exemption authority, its goodwill, its ground facilities, and its long investment in attempting to "make a go" of helicopter service in the Bay area, are valuable assets which it should have an opportunity to liquidate for the benefit of its stockholders and creditors. Cal-Tex submits that as a purchaser for SFO's service authorizations, it is an "interested person" possessing a material and substantial interest in the continued effectiveness of SFO's operating authority and remaining assets. The objectors submit that the time extension sought is a reasonable one particularly in face of the fact that SFO had no reason to expect the Board would propose immedaite termination of its operating authority. SFO further states, however, that if the objections here are deemed by the Board to delay in any way approval of the aircraft purchase transaction between SFO and BAH, then SFO withdraws from this joint objection.

Upon consideration of the foregoing pleadings and all the relevant facts, we have decided that the tentative findings and conclusions contained in Order 76-11-52, dated November 9, 1976, should be made final, and that the public convenience and necessity require that (1) pursuant to section 401(f)[3] of the Act, SFO's certificate for Route 103 be terminated and (2) pursuant to section 408 of the Act, the application of SFO and BAH for approval of an aircraft purchase transaction be granted.

As pointed out in Order 76-11-52, SFO ceased operations on August 23, 1976 and intends to liquidate its assets and dissolve the corporation. SFO's cessation of operations justifies termination of its certificate under section 401(f) of the Act. In all its pleadings filed in this proceeding, SFO has clearly stated that it is not about to renew its operations; it only desires to sell its remaining assets and transfer its certificate and exemption authority to Cal-Tex in order to liquidate. However, we find that any further delay in terminating this certificate is contrary to the public interest in that the prompt development of other commuter service in the Bay area would be discouraged by such a delay. As we noted in the show-cause order, all operations which were performed by SFO could be legally conducted under Part 298 free from all the major requirements of section 401 of the Act. There is nothing in the Federal Aviation Act to prevent Cal-Tex from providing service over SFO's old route as an air taxi operator under Part 298. Moreover, SFO will now be free to sell its remaining assets to Cal-Tex or any other person without Board approval. Under these circumstances, we will deny the joint petition for a stay and cancel SFO's certificate for Route 103.

Accordingly, it is ordered, That:

1. The tentative findings and conclusions contained in Order 76-11-52, be and they are hereby made final;

2. The application of SFO Helicopter Airlines and British Airways Helicopters in Docket 29937 for approval of an aircraft purchase transaction, pursuant to section 408, be and it hereby is granted;

3. The certificate of public convenience and necessity of SFO Helicopter Airlines for Route 103, be and it hereby is terminated;

4. The motion of SFO Helicopter Airlines and Cal-Tex Helicopter Airlines to withhold their tentative agreement from public disclosure, be and it hereby is granted;

5. The motion of SFO Helicopter Airlines and Cal-Tex Helicopter Airlines for a stay of the proceedings in Order 76-11-52, be and it hereby is denied; and

6. This order may be amended or revoked at any time in the discretion of the Board without hearing.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-38201 Filed 12-28-76;8:45 am]

[Docket 29039]

TRANS WORLD AIRLINES, INC.

Complaint of Glenda G. Gordon, Assignment of Proceeding

In the matter of Trans World Airlines, Inc., enforcement proceeding and complaint of Glenda G. Gordon.

This proceeding is hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief, Administrative Law Judge.

[FR Doc.76-38185 Filed 12-28-76;8:45 am]

[1] Neither SFO nor Cal-Tex object to any other part of Order 76-11-52.

[2] A copy of a tentative agreement dated November 26, 1976, between SFO and Cal-Tex accompanied the objections. The agreement was accompanied by a motion to withhold from public disclosure, which will be granted.

[3] While the show-cause order clearly expressed our tentative decision to terminate SFO's certificate, it referred to revocation under subsection (g) of section 401, rather to an action under subsection (f) which we find more appropriate as a technical matter. SFO and Cal-Tex, however, have expressed general opposition to a termination of SFO's certificate rather than concern for the specific statutory provision cited. See also Order 76-11-52, p. 8, footnote 10.

[Docket 30041]

TRANS WORLD AIRLINES, INC.

Complaint of Robert J. Levine, Assignment of Proceeding

In the matter of Trans World Airlines, Inc., enforcement proceeding complaint of Robert J. Levine.

This proceeding is hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38186 Filed 12-28-76;8:45 am]

[Docket 30044]

TRANS WORLD AIRLINES, INC.

Complaint of Oliver C. Morse; Assignment of Proceeding

In the matter of Trans World Airlines, Inc., enforcement proceeding and complaint of Oliver C. Morse.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38187 Filed 12-28-76;8:45 am]

TRANS WORLD AIRLINES, INC.

[Docket 29219]

Complaint of Joseph C. Donohue; Assignment of Proceeding

In the matter of Trans World Airlines, Inc. Enforcement proceeding, complaint of Joseph C. Donohue.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C. December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38190 Filed 12-28-76;8:45 am]

[Docket 29386]

TRANS WORLD AIRLINES, INC.

Complaint of Joyce Trattner Leanse; Assignment of Proceeding

In the matter of Trans World Airlines, Inc., enforcement proceeding complaint of Joyce Trattner Leanse.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38191 Filed 12-28-76;8:45 am]

[Docket 30042]

TRANS WORLD AIRLINES, INC.

Complaint of Overby Pearson, Jr.; Assignment of Proceeding

In the matter of Trans World Airlines, Inc., enforcement proceeding complaint of James Overby Pearson, Jr.

This proceeding is hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38192 Filed 12-28-76;8:45 am]

[Docket 28593]

TRANS WORLD AIRLINES, INC.

Complaint of Robert L. Nissly; Assignment of Proceeding

In the matter of Trans World Airlines, Inc., enforement proceeding complaint of Robert L. Nissly.

This proceeding is hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38193 Filed 12-28-76;8:45 am]

[Docket 28298]

TRANS WORLD AIRLINES, INC.

Complaint of James Aiken Fisher; Assignment of Proceeding

In the matter of Trans World Airlines, Inc., enforcement proceeding complaint of James Aiken Fisher.

This proceeding is hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38194 Filed 12-28-76;8:45 am]

[Docket 29288]

TRANS WORLD AIRLINES, INC.

Complaint of Susan D. Goland; Assignment of Proceeding

In the matter of Trans World Airlines, Inc. enforcement proceeding complaint of Susan D. Goland.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief
Administrative Law Judge.

[FR Doc.76-38195 Filed 12-28-76;8:45 am]

[Docket 29871]

UNITED AIR LINES, INC.

Complaint of Charles Tremaine Dewoody; Assignment of Proceeding

In the matter of United Air Lines, Inc. Enforcement proceeding, complaint of Charles Tremaine Dewoody.

This proceeding is hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., December 21, 1976.

ROSS I. NEWMANN,
Chief,
Administrative Law Judge.

[FR Doc.76-38184 Filed 12-28-76;8:45 am]

CIVIL SERVICE COMMISSION

COMMITTEE ON PRIVATE VOLUNTARY AGENCY ELIGIBILITY

Meeting

Pursuant to the provisions of section 10 of Public Law 92-463, notice is hereby given that the Committee on Private Voluntary Agency Eligibility will hold a meeting on January 17, 1977. The meeting will be held in Room 7B09, Civil Service Commission Building, 1900 E Street, N.W., Washington, D.C., at 9:30 a.m.

The Committee's primary responsibility is to make recommendations to the Chairman of the Civil Service Commission regarding eligibility of national voluntary agencies to participate in the Federal fund-raising program. At this meeting the Committee will review applications for fund-raising privileges which have been submitted by voluntary organizations to the Commission in compliance with the Federal Fund-Raising Manual.

The meeting will be open to the public. Any interested person may file a written statement with the Committee in advance of or at the meeting. Additional information concerning this meeting may be obtained by contacting the Office of the Assistant to the Chairman, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, telephone 202-632-5564 (Mrs. Davis).

GEORGE J. MCQUOID,
Assistant to the Chairman.

DECEMBER 22, 1976.

[FR Doc.76-38128 Filed 12-28-76;8:45 am]

DEPARTMENT OF COMMERCE

Economic Development Administration

PENNY BAG, INC.

Petition for Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Penny Bag, Inc., 25 Renwick Street, Newburgh, New York 12550, a producer of handbags for women, was accepted for filing on December 20, 1976, pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618).

Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.76-38123 Filed 12-28-76;8:45 am]

National Bureau of Standards

FEDERAL INFORMATION PROCESSING STANDARDS TASK GROUP 13

Termination

Pursuant to section 14 of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that the Federal Information Processing Standards Task Group 13 (FIPS TG-13), Workload Definition and Benchmarks, is terminated upon publication of this notice in the Federal Register.

This committee was originally chartered in January 1973 for the purpose of advising the Secretary of Commerce on matters relating to the nation's need for methodology, data, and techniques in the computer workload definition and benchmarking area.

Since its establishment, FIPS TG-13 has developed and revised the detailed technical *Guidelines for Benchmarking ADP Systems in the Competitive Procurement Environment*, FIPS PUB 42, December 15, 1975. Copies of FIPS PUB 42 are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (SD Catalog No. C13.52:42). Microfiche copies are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151 (refer to NBS-FIPS-PUB-42 and its title).

It has been determined that the recommended technical benchmarking guidelines adequately address a major portion of benchmarking problems which are of mutual concern to Federal computer users and commercial interests. The National Bureau of Standards will continue Federal developmental work on computer workload definition and benchmarking standards, but such work will concentrate primarily on specific technical issues of interest to Federal agencies, and will not require public advisory participation. Therefore, it is no longer considered necessary to continue FIPS TG-13 as an advisory committee under the Federal Advisory Committee Act. The termination of FIPS TG-13 represents an instance where the decreased necessity for advice through the mechanism of an advisory committee will allow for conservation of agency resources.

ERNEST AMBLER,
Acting Director.

DECEMBER 9, 1976.

[FR Doc.76-38122 Filed 12-28-76;8:45 am]

National Oceanic and Atmospheric Administration

NAVAL UNDERSEA CENTER

Notice of Modification of Permit

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (c) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Scientific Research Permit issued to the Naval Undersea Center, Biosystems Research Department, on March 7, 1974, as later amended and then modified on July 8, 1974 (39 FR 24932), on August 2, 1974 (39 FR 27933), on February 26, 1975 (40 FR 8240), on April 22, 1975 (40 FR 17770), on September 11, 1975 (40 FR 42230), on November 18, 1975 (40 FR 53417), and on June 16, 1976 (41 FR 24440), is further modified by means of Modification No. 9, in the following manner:

The period of validity of the Permit is extended from December 31, 1976 to December 31, 1978;

This modification is effective on December 29, 1976.

The Permit as modified is available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 15, 1976.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Service.

[FR Doc.76-38150 Filed 12-28-76;8:45 am]

NEW ENGLAND AQUARIUM

Notice of Modification of Permit

Notice is hereby given that, pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the public display permit issued to New England Aquarium, Central Wharf, Boston, Massachusetts 02110, on November 8, 1974, is modified, by means of Modification No. 1, in the following manner:

The modification extends the period of validity of the permit, with respect to the authorized taking, from December 31, 1976, to December 31, 1978.

This modification is effective on December 29, 1976.

The Permit, as modified, and documentation pertaining to the modification is available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: December 15, 1976.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Services.

[FR Doc.76-38151 Filed 12-28-76;8:45 am]

LEONARD F. PORTER, INC.

Notice of Receipt of Application for Certificate of Exemption

Notice is hereby given that the following applicant has applied in due form for a Certificate of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

Applicant: Leonard F. Porter, Inc., 600 Profontaine Building, Third and Yesler Streets, Seattle, Washington 98104.

Period of exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (1) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part; (2) The prohibition, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products to be made from approximately 1,420 pounds of baleen.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Depart-

ment of Commerce, Washington, D.C. 20235 on or before January 28, 1977.

Dated: December 22, 1976.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.76-38159 Filed 12-28-76;8:45 am]

National Oceanic and Atmospheric Administration

CHARLES MILTON BARRINGER

Notice of Receipt of Application for Certificate of Exemption

Notice is hereby given that the following applicant has applied in due form for a Certificate of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

Applicant: Charles Milton Barringer, 217 2nd Isle North, Port Richey, Florida 33568.

Period of exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (1) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce by any means whatsoever and in the course of commercial activity any such species part, (2) The prohibtion, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products to be made from approximately 4,268 sperm whale teeth and 26 pounds of sperm whale bone.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before January 28, 1977.

Date: December 22, 1976.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.76-38158 Filed 12-28-76;8:45 am]

Office of the Secretary

ADVISORY COMMITTEE ON PRODUCT LIABILITY

Open Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act. 5 U.S.C. App. I (Supp. V. 1975), notice is hereby given that a meeting of the Advisory Committee on Product Liability will be held at 1:00 P.M., Tuesday, January 11, 1977 in Room 4830 of the Main Commerce Building 14th Street between E. Street and Constitution Avenue, N.W., Washington, D.C.

The Committee was established to advise the Department, through the Under Secretary, on measures that might be taken in the public policy area to facilitate improvements in the product liability process.

Agenda items are as follows:

1. Discussion of the Briefing Report of the Interagency Task Force on Product Liability.
2. Comments and questions from the public.

The meeting will be open to public observation and a period will be set aside for oral comments or questions by the public. Any person who wishes to file a written statement with the Committee may do so before or after the meeting. Approximately 40 seats will be available to the public on a first come, first serve basis.

Minutes of the meeting will be available on request 30 days after the meeting from the Committee Control Officer.

Additional information may be obtained from the Committee Control Officer, (202-377-2101), Room 2998C, United States Department of Commerce, Washington, D.C. 20230.

Dated: December 28, 1976.

EDWARD T. BARRETT, II,
Committee Control Officer.

[FR Doc.76-38411 Filed 12-28-76;11:15 am]

DEPARTMENT OF DEFENSE

Department of the Army

FORT POLK MILITARY RESERVATION, LA.

Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

Correction

In FR Doc. 75-11947 appearing in the FEDERAL REGISTER of Wednesday, May 7, 1975 the following corrections should be made on page 19853, third column, in the land description.

In the 4th line in "Sec. 15," change "SW¼" to "SW½";

In the 10th and 11th lines, in "Sec. 21," change "W;" and "NW¼" to "W½" and "NW½";

In the 12th line in "Sec. 28," change "NW¼" to "NW½."

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

FEDERAL INTERACTION WITH COMMERCIAL STANDARDS-SETTING BODIES

Proposed OMB Circular; Extension of Time

DECEMBER 21, 1976.

On November 30, 1976, the Office of Federal Procurement Policy issued a proposed OMB circular establishing a uniform policy for all executive branch agencies in working with commercial (non-Federal) standards-setting bodies (published December 8, 1976, 41 FR 53723). Comments were requested not later than December 31, 1976. This date is hereby extended to January 31, 1977.

HUGH E. WITT,
Administrator.

[FR Doc.76-38121 Filed 12-28-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

MINORITY BUSINESS RESOURCE CENTER ADVISORY COMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463); (5 U.S.C. App. I) notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held January 7, 1977, at 9:00 a.m. until 4:00 p.m. at the Consolidated Rail Corporation, 6 Penn Center Plaza, Room 1240A, Philadelphia, Pennsylvania 19104. The agenda for this meeting is as follows:

(a) Tour of Consolidated Rail's (ConRail) Facilities.
(b) Adoption of Advisory Commitee recommendations for the Minority Business Resource Center.
(c) Progress report on Financial Assistance programs.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons withing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Kenneth E. Bolton, Executive Director, Minority Business Resource Center, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, Telephone: 202-426-2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on December 22, 1976.

KENNETH E. BOLTON,
Executive Secretary.

[FR Doc.76-38124 Filed 12-28-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 662-4; OPP—30000/9A]

INTENT TO PROCESS PESTICIDE PRODUCTS CONTAINING SPERM WHALE OIL FOR REREGISTRATION

Correction

On November 19, 1976, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (41 FR 51067) a notice stating its intention to process according to normal reregistration and classification procedures pesticide products containing sperm whale oil, provided that the sperm whale oil used in these products was derived from supplies lawfully held in this country prior to December 23, 1973. The Agency also listed the following registrants and registered products:

EPA registration No.	Registrant	Product trade name
008596-00017	Kemin Industries, Inc., Box 70, Des Moines, Iowa 50301.	Grain Treet Liquid.
001174-00001	Industrial Sanitation Co., P.O. Box 471, East Chicago, Ill. 46312.	Kapray Odorless Renovator.
001266-00130	Malter International Corp., Box 6099, New Orleans, 70114.	So-Clean Foaming Cleanser.
001769-00105	National Chemsearch Division, 2727 Chemsearch Blvd., Irving, Tex. 75060.	National Chemsearch Lustra Germicidal Conc. Bowl Cleaner.

Subsequent review of Agency records has shown that these four products do not contain sperm whale oil, these registrations were listed through computer error in the search program for products containing sperm whale oil. The November 19th FEDERAL REGISTER notice is therefore irrelevant to the registration or reregistration of these products.

Should any applications for registration of pesticide products containing sperm whale oil be submitted to the Agency, however, these applications will be processed in accordance with the procedure outlined in the November 19th notice of intent to process for reregistration.

Dated: December 16, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.76-37937 Filed 12-28-76;8:45 am]

[FRL 655-1]

TOXIC SUBSTANCES CONTROL ACT REPORTING AND PREMARKET NOTIFICATION REQUIREMENT

Formation of Premarket Notification Working Group; Solicitation of Comments

The Toxic Substances Control Act 1976 requires that the Environmental Protection Agency (EPA) establish mechanisms for premarket notification by manufacturers of all new chemicals introduced into commerce after mid-December 1977. In the next year EPA must clarify the provisions in the law for the reporting of new chemicals. An inventory or list of all chemicals in commerce must be promulgated by November 11, 1977. EPA must prepare a reporting form for premarket notice of new chemicals and clarify provisions for exemption from the premarket notification requirement.

Accordingly, the Agency has initiated a work group to establish the procedures necessary to carry out the intention of the new law with respect to premarket notification requirements. The major focus of the work group will be on Section 8 (a) and (b) and Section 5. This undertaking calls for the resolution of many technical and policy issues which will impact the overall implementation of the Act. Some of the major issues that will have to be addressed involve the choice of categories of chemicals that might be included on the initial inventory list, clarification of certain definitions such as "research chemicals" and "test marketing", and various procedural questions such as the development of a reporting form. At a later date the work group may address questions associated with the implementation of discretionary provisions concerning premarket notification requirements, such as the designation of significant new uses.

EPA welcomes comments on these and any other aspects of the premarket notification sections (8 (a) and (b) and 5) of the Toxic Substances Control Act. Please address your comments to:

Environmental Protection Agency, Office of Toxic Substances (WH-557), 401 M Street, S.W., Washington, D.C. 20460, Attention: Ms. Cynthia C. Kelly.

Dated: Dec. 23, 1976.

KENNETH L. JOHNSON,
Acting Assistant Administrator for Toxic Substances.

[FR Doc.76-38211 Filed 12-28-76;8:45 am]

[FRL 662-6]

ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

Availability of EPA Comments

Pursuant to the requirements of section 102(2) (C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of October 1, 1976 and October 31, 1976.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, and the source of the EPA review as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listed in Appendices I, III, IV, and V.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW, Washington, DC 20460, telephone 202/755-2808. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: December 22, 1976.

REBECCA W. HANMER,
Director, Office of Federal Activities.

APPENDIX I.—*Draft environmental impact statements for which comments were issued between October 1, 1976, and October 31, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
	CORPS OF ENGINEERS		
D-COE-C32008-NJ	Great Egg Harbor Inlet and Peck Beach, Ocean City, Cape May County, N.J.	LO-2	C
DS-COE-C36009-NY	Cazenovia Creek Watershed, Flood Control, Erie County, N.Y.	LO-1	C
D-COE-D35011-PA	Rohm & Haas Co., Permit, Placing Solid Fill in the Delaware River Off Bridge St., Philadelphia, Pa. (NAPOP-R-033).	ER-2	D
DS-COE-E32011-AL	Theodore Ship and Barge Channel Extension, Mobile Bay, Ala.	ER-2	E
D-COE-F32045-MI	Bay Port and Caseville Harbors, Maintenance and Dredging Operations, Michigan.	EU-1	F
D-COE-F36042-MI	Shoreline Flood Protection Study, Detroit Waterfront, Wayne County, Mich.	3	F
D-COE-F36045-WI	Mississippi River Flood Control, Prairie du Chien, Crawford County, Wis.	LO-1	F
DS-COE-G32013-LA	Mermental River, Gulf of Mexico, Navigation Channel, Louisiana.	LO-2	G
D-COE-G36051-AR	Flood Control Improvements, Eight Mile Creek, Greene County, Ark.	LO-1	G
D-COE-H34013-KS	Operation and Maintenance, Milford Lake, Geary, Clay, and Dickinson Counties, Kans.	LO-1	H
DS-COE-H36016-IA	West Des Moines and Des Moines Local Flood Protection, Polk County, Iowa.	LO-1	H
D-COE-K35009-CA	Homboldt Bay Harbor Marina, Permit, Eureka, Homboldt County, Calif.	ER-2	J
DS-COE-L05005-AK	Hydroelectric Power Development, Upper Susitna River Basin, Southcentral Railbelt Area, Alaska.	ER-2	K
DS-COE-L36041-WA	Chehalis River, Flood Control, South Aberdeen Cosmopolis, Grays Harbor County, Wash.	LO-2	K
D-COE-L39009-AK	Port Lions Small Boat Harbor, Port Lions, Alaska	3	K
	DEPARTMENT OF AGRICULTURE		
D-AFS-F60002-MN	Proposed Land Exchange, Superior National Forest, Minn.	EU-3	F
D-AFS-J65051-CO	Thompson Creek Land Use Plan, White River National Forest, Pitkin County, Colo.	LO-2	I
D-AFS-J65052-MT	Multiple-Use Plan, Prospect Planning Unit, Lolo National Forest, Sanders County, Mont.	LO-2	I
D-AFS-K65016-00	Tolyabe National Forest, Alpine Planning Unit, Alpine and El Dorado Counties, Calif., and Douglas County, Nev.	LO-1	J
D-AFS-L61078-ID	Land Use Plan, Boulder Planning Unit, Kaniksu National Forest, Boundary County, Idaho.	LO-1	K
D-AFS-L61079-ID	Land Use Plan, Elk River Planning Unit, St. Joe National Forest, Clearwater County, Idaho (USDA-FS-R1-01-FES-ADM-75-13).	LO-1	K
D-AFS-L61080-AK	Karta Unit Management Plan, Tongass National Forest, Ketchikan, Alaska (FS-R10-DES-ADM-75-05).	LO-2	K
D-AFS-L61081-OR	Bull Run Planning Unit, Clackamas, Multnomah, and Hood River Counties, Mount Hood National Forest, Oreg. (USDA-FS-R6-DES-ADM-76-10).	LO-1	K
D-REA-J03000-CO	500-MW Combustion Turbine Package Powerplants, Burlington Generating Station, Tri-State Generation and Transmission Association, Inc., Denver, Kit Carson County, Colo.	LO-1	I
D-REA-L05006-AK	2 60-MW Combustion Turbines, Alaska 6 Golden Valley, Alaska (USDA-REA-EIS-ADM-76-13-D).	LO-2	K
DS-SCS-E36041-AL	Blue Eye Creek Watershed, Calhoun and Talladega Counties, Ala. (WS-(ADM)-76-1-D-AL).	LO-2	E
D-SCS-F36044-IL	Little Cache Creek Watershed, Johnson County, Illinois	LO-2	F
	DEPARTMENT OF DEFENSE		
D-USA-J20006-UT	Operation of Chemical Agent Munitions Disposal System (CAMDS), Tooele Army Depot, Utah.	ER-2	I
	DEPARTMENT OF INTERIOR		
D-BIA-J01007-MT	Crow-Ceded Area Coal Lease, Tracts II and III, Westmoreland Resources, Big Horn County, Mont.	ER-2	I
D-BLM-J01006-CO	Northwest Colorado Coal, Routt, Moffat, and Rio Blanco Counties, Colo.	13	I
D-BLM-J07004-UT	Emery Powerplant, Construction and Operation, Coal-Fired, Steam Electric-Generating Units, Emery County, Utah.	ER-2	I
D-BLM-L08024-00	500-kV Transmission Line, Pacific Power & Light Co., Midpoint, Idaho, to Medford, Oreg. (DES-76-32).	ER-2	K
D-BOR-H61001-IA	Acquisition and Development, Des Moines Riverfront Development, Polk County, Iowa.	LO-2	H
DS-DOI-A61077-ME	Acadia National Park, Master Plan, Hancock and Knox Counties, Maine (DES-76-24).	LO-1	B
D-IBR-G07010-NM	Proposed Expansion of San Juan Powerplant, San Juan County, N. Mex.	LO-2	G
D-IBR-J34006-CO	Construction, Fruitland Mesa Project, Delta, Montrose, and Gunnison Counties, Western Colorado.	ER-2	I

Identifying No.	Title	General nature of comments	Source for copies of comments
	DEPARTMENT OF TRANSPORTATION		
DS-DOT-A41199-KS	KS-7, Nettleton Avenue to North or Riverview Road, Bonner Springs, Wyandotte County, Kans. (FHWA-KS-EIS-72-07-DS-3).	LO-1	H
DS-DOT-A41305-VT	I-93, Littleton, N.H., to Waterford, Vt. (FHWA-NH-EIS-72-01-DS).	ER-1	B
DS-DOT-A41472-VT	U.S. 7, Sunderland to Manchester, Vt.	ER-2	B
D-FAA-C51005-NY	Chemung County Airport, Town of Big Flats, Elmira, N.Y.	LO-2	C
D-FAA-D51007-MD	Ocean City Airport, Expansion, Worcester County, Md. (WADO-611).	LO-2	D
D-FAA-L51007-AK	Akhiok Airport, Kodiak Island, Akhiok, Alaska.	LO-1	K
D-FHW-B40019-NY	I-93, Franconia Notch and Alternate Routes, Lincoln to Franconia, Grafton County, N.H. (FHWA-NH-EIS-76-02-D).	ER-1	B
D-FHW-C40026-NY	Sprain Brook Parkway, Westchester County, N.Y.	ER-2	C
D-FHW-D40037-MD	U.S. 15, Putman Road to MD-77, Frederick County, Md.	ER-2	D
D-FHW-D40038-VA	VA-76, Powhite Parkway Extension, Chesterfield County, Va.	ER-2	D
DS-FHW-E40078-MS	I-55 and Riverside Park, Jackson, Hinds County, Miss. (FHWA-MS-EIS-76-03-F).	LO-1	E
D-FHW-E40082-TN	I-40, Claybrook to Bon Air Sts., Memphis, Shelby County, Tenn. (FHWA-TN-EIS-76-03-F).	ER-2	E
D-FHW-F40070-MN	U.S. 2 Bypass of Bemidji, Beltrami County, Minn. (FHWA-MN-EIS-76-03-D).	LO-2	F
D-FHW-F40071-IL	IL-409, O'Fallon to Sandoval, St. Clair, Clinton, and Marion Counties, Ill.	LO-2	F
D-FHW-F40072-OH	I-480 and Ohio Turnpike to OH-252, Lorain and Cuyahoga Counties, Ohio.	ER-2	F
D-FHW-F40073-MI	I-94, Business Loop, Berrien County, Mich. (FHWA-MI-EIS-76-02-D).	ER-2	F
D-FHW-F40074-WI	Knowlton Bridge and Approaches, WI-34, Marathon County, Wis.	LO-2	F
D-FHW-F40078-OH	OH-7 Relocation, Shadyside, Meade, and Poultney Townships, Belmont County, Ohio.	LO-1	F
D-FHW-G40055-LA	Louisiana North-South Expressway Study, Opelousas to Alexandria to Shreveport to Monroe, La.	LO-2	G
D-FHW-H40061-KS	U.S. 73, Leavenworth and Atchison Counties, Kans. (FHWA-KS-EIS-76-04-D).	LO-1	H
D-FHW-J40024-CO	U.S. 24, Bypass, Colorado Springs, El Paso County, Colo.	ER-2	I
D-FHW-J40025-CO	Project U-160-2(14) Through Alamosa, Alamosa County, Colo.	LO-1	I
DS-FHW-K40016-CA	CA-7, Long Beach Freeway, Between CA-10 and CA-210, Los Angeles County, Calif.	ER-2	J
D-FHW-K40045-NV	Flamingo Rd., I-15 to U.S. 93 and U.S. 95, Boulder Highway, Clark County, Nev. (FHWA-NV-EIS-76-04-D).	ER-2	J
D-FHW-L40040-ID	Gould St. Connection, U.S. 30, Pocatello, Bannock County, Idaho (FHWA-ID-EIS-76-04-D).	LO-2	K
D-FHW-L40041-ID	Granite Hill to Swan Valley, U.S. 26, Bonneville County, Idaho (FHWA-ID-EIS-76-06-D).	LO-1	K
	ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION		
D-ERD-A00122-ID	Waste Management Operations, Idaho National Engineering Laboratory (INEL), Idaho.	ER-2	A
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
D-HUD-C85011-NY	Commercial Complex Downtown, Yonkers, N.Y.	ER-2	C
D-HUD-C85012-PR	Los Caobos Development, Project No. 76-305, Ponce, P.R.	ER-2	C
D-HUD-C89001-NY	Project Agnes, Urban Renewal Project, Corning, Steuben County, N.Y. (NYR-404).	LO-2	C
D-HUD-D85007-MD	St. Charles Communities, Charles County, Md.	ER-2	D
DS-HUD-E28003-NC	Great Alamance Creek Water Supply Project, Burlington, N.C. (CDBG).	LO-2	E
D-HUD-G24002-AR	Southeast Sanitary Sewer and Drainage Improvements, Pine Bluff, Jefferson County, Ark.	LO-1	G
D-HUD-G85016-TX	Sewer Improvements, Henderson, Rusk County, Tex.	LO-1	G
D-HUD-K85004-CA	Woodside Village Project, West Covina and Walnut, Los Angeles County, Calif.	ER-2	J
	INTERNATIONAL BOUNDARY AND WATER COMMISSION		
D-IBW-G05003-TX	Amistad Hydroelectric Plant, Rio Grande, Val Verde County, Tex.	LO-1	G
	INTERSTATE COMMERCE COMMISSION		
D-ICC-A53042-00	Investigation of Freight Rates for the Transportation of recyclable/Recycled Materials.	LO-1	A
	NATIONAL AERONAUTICS AND SPACE ADMINISTRATION		
DS-NAS-D84003-VA	National Transonic Facility, Langley Research Center, Hampton, Va.	LO-2	D
D-NAS-J99001-UT	Space Shuttle Solid Rocket Motor D.D.T. & E. Program at Thiokol/Wasatch Division, Promontory, Utah.	LO-1	I

Identifying No:	Title	General nature of comments	Source for copies of comments
	NUCLEAR REGULATORY COMMISSION		
DS-AEC-A00059-PA	Three Mile Island Nuclear Station, Unit 2, Metropolitan Edison, Jersey Central Power & Light, and Pennsylvania Electric Cos., Docket No. 50-320, Dauphin County, Pa.	ER-2	D
D-NRC-F06003-WI	La Crosse Boiling Water Reactor, Dairyland Power Cooperative, Docket STN 50-409, Vernon County, Wis. (NUREG-0087).	3	F

[1] EPA has rated the EIS in 2 parts: The regional analysis portion of the EIS was rated category 3 and the specific mining plans was rated as category ER-2.

APPENDIX II.—DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—*Final environmental impact statements for which comments were issued between Oct. 1, 1976 and Oct. 31, 1976*

Identifying No:	Title	General nature of comments	Source for copies of comments
	CORPS OF ENGINEERS		
FS-COE-A32188-MT	Libby Dam and Lake Koocanusa, Kootenai River, Lincoln County, Mont.	EPA's concerns were adequately addressed in the final EIS. EPA requested the opportunity to review the results of the model studies regarding the probability of achieving gas supersaturation design goals.	I
FS-COE-A34079-CA	Warm Springs Dam and Lake Sonoma Project, Russian River Basin, Sonoma County, Calif.	EPA's concerns were adequately addressed in the supplement to the final EIS.	J
FS-COE-C32005-NJ	Maintenance of the Raritan River, Navigation Project, New Jersey.	EPA expressed environmental reservations concerning the effects of dredging and disposal of spoil on water quality and anadromous fish. Accordingly, EPA recommended a meeting between affected Federal and State agencies to arrive at a mutually agreeable plan.	C
F-COE-F36007-IL	Milan-Big Island Local Flood Protection, Illinois.	EPA's concerns were adequately addressed in the final EIS.	C
F-COE-H36028-CO	Locks and Dam No. 26, replacement, Mississippi River, Alton, Ill., Missouri and Illinois.	EPA's review of the final EIS indicated the COE was unresponsive to the concerns expressed in EPA's comment letter on the draft EIS. In addition, only two out of several inadequacies identified by EPA received satisfactory responses. EPA requested to be consulted in the planning and development of the project if it receives congressional approval.	H

Identifying No.	Title	General nature of comments	Source for copies of comments
	DEPARTMENT OF COMMERCE		
F-NOA-A99096-00	Renegotiation of Interim Convention on Conservation of North Pacific Fur Seals.	EPA's concerns were adequately addressed in the final EIS.	A
	DEPARTMENT OF THE INTERIOR		
F-IBR-J34004-CO	Dallas Creek, Project, Colorado...	EPA expressed environmental reservations on the project as proposed. Specifically, EPA is concerned about the lack of substantiation of the conclusions concerning the fate of heavy metals, the uncertain nature of the water exchange agreement, and the existence of an alternative which would apparently remove the need for 27 pct of the reservoir's waters.	I
F-SFW-A82096-00	Use of Avian Stressing Agent PA-14 for Control of Blackbirds and Starlings at Winter Roosts.	EPA's comments on the final EIS will be combined with the review of the proposed policy and guidelines referenced in the final EIS.	A
	DEPARTMENT OF TRANSPORTATION		
F-FAA-C51003-VI	Harry S. Truman Airport Master Plan, St. Thomas, V.I.	EPA's concerns were adequately addressed in the final EIS.	C
FS-FHW-A41763-NC	Charlotte Inner Belt Loop, York Rd., NC-49, to Central Ave., Mecklenburg County, N.C. (FHWA-NC-EIS-73-04-S).	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA feels additional clarification of the information contained in table I-N is warranted.	E
F-FHW-C40001-PR	Jesus T. Pinerio Ave., PR-17, Puerto Rico.	EPA's review of the final EIS indicated the FHWA was unresponsive to EPA's comments on the draft EIS concerning air quality and mass transit alternatives. EPA requested a meeting be held to resolve these issues.	C
F-FHW-F40044-IN	IN-182, Muncie Bypass between I-69 and Tillotson Ave., Delaware County, Ind.	EPA's concerns were adequately addressed in the final EIS. EPA requested the opportunity to review the FHWA's plans for noise abatement.	F
F-FHW-K40036-CA	Sacramento River Crossing, I-5 to CA-273, Shasta County, Calif. (FHWA-CA-EIS-76-01-D).	EPA's concerns were adequately addressed in the final EIS.	J
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
F-HUD-F85007-MN	Preserve Planned Unit Development, Northmark, Winslope, Neill Lake, Eden Prairie, Hennepin County, Minn.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA recommended that areas of the development subjected to severe noise from the Flying Cloud Airport be zoned for non-noise sensitive uses. EPA also indicated HUD should be aware of the potential overuse of the water supply aquifer as predicted in the level B study for the seven-county metropolitan area.	F
F-HUD-J85005-CO	Hutchinson Heights, Planned Community Development, Denver, Arapahoe County, Colo.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA stressed that HUD should address cumulative impacts for the housing developments in the Denver area that are being considered for FHA approval.	I
	FEDERAL POWER COMMISSION		
FS-FPC-A03063-00	Alaska Natural Gas Transportation Systems.	EPA notes that in many respects the Alcan route could prove to have the fewest direct adverse environmental impacts of any of the three major proposals to deliver Alaskan natural gas to the lower 48 States. However, the existence of permafrost conditions over the Alcan System route guarantees environmental and technical problems should a buried chilled pipeline concept be adopted. EPA, therefore, stated its environmental reservations with the Alcan proposal pending the satisfactory resolution of pipeline design problems associated with construction in permafrost areas.	A

APPENDIX IV.—*Final environmental impact statements which were reviewed and not commented on between Oct. 1, 1976 and Oct. 31, 1976*

Identifying No.	Title	Source of review
	CORPS OF ENGINEERS	
F-COE-A34113-00	McNary Lock and Dam Project, Lake Wallula, Columbia River, Wash. and Oreg.	K
F-COE-A35062-MS	Pass Christian Harbor, Maintenance Dredging, Mississippi Sound, Harrison County, Miss.	E
F-COE-A35144-AL	Bon Secour River, Maintenance Dredging, Baldwin County, Ala.	E
F-COE-A36108-MA	Charles River Study, Flood Control, Mass.	B
F-COE-A36108-LA	Tensas Basin, Flood Control, Concordia County, La.	G
F-COE-B35003-RI	Proposed Improvement Dredging, Galilee Harbor, Point Judith Pond, Narragansett, R.I.	B
F-COE-C32001-NY	Improved Navigation, St. Lawrence Seaway, South Cornwall Channel, Pollys Gut, N.Y.	C
F-COE-D36001-PA	Lock Haven Flood Protection Project, West Branch, Susquehanna River and Bald Eagle Creek, Pa.	D
F-COE-G34006-LA	Mississippi River Outlets, Vicinity of Venice, La.	G
F-COE-J34001-CO	Operation and Maintenance, John Martin Dam and Reservoir, Arkansas River, Benton County, Colo.	I
	DEPARTMENT OF AGRICULTURE	
F-AFS-J65016-MT	Master Plan, Big Mountain Ski Resort, Flathead National Forest, Mont.	I
F-AFS-J65031-MT	Big Swede-Pipe Planning Unit, Kootenai National Forest, Mont.	I
F-AFS-L61053-WA	Twisp-Winthrop-Conconully Planning Unit, Okanogan National Forest, Wash. (USDA-FS-R6-FES (Adm.)-76-5).	K
F-REA-G07005-AR	Flint Creek Power Plant, 500 MW, Benton County, Ark.	G
	DEPARTMENT OF DEFENSE	
F-USA-A11054-00	Formation of U.S. Army Electronics Research and Development Command, New Jersey, Maryland and Virginia.	A
	DEPARTMENT OF INTERIOR	
F-IBR-G28002-NM	Eastern New Mexico Water Supply Project, New Mexico.	G
	DEPARTMENT OF TRANSPORTATION	
F-FHW-E40072-NC	U.S. 64, Asheboro to Ramseur, Randolph County, N. C.	E
F-FHW-H40030-KS	McLean Blvd., MacArthur Rd. to 31st South to 20th St., Wichita, Sedgwick County, Kans.	H
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
F-HUD-E28009-AL	Water Distribution System, North Sumter County, Ala. (CDBG)	E
F-HUD-E28010-TN	DeKalb County Rural Potable Water Line, Smithville, Tenn. (CDBG)	E
F-HUD-E28013-AL	Ppelika Wastewater Facilities Projects, Opelika, Lee County, Ala.	E
F-HUD-G38001-TX	City of Mesquite Drainage Project, Dallas, Tex.	G
F-HUD-G85013-LA	Woodmere Subdivision, Jefferson Parish, La.	G
F-HUD-J85006-CO	Brown Farm, Planned Residential Development, Ft. Collins, Colo.	I
	TENNESSEE VALLEY AUTHORITY	
F-TVA-E09001-00	Policies Relating to Electric Power Rates, TVA's Electric Rates in Effect Throughout the Tennessee Valley Region and Authority.	E

APPENDIX V.—*Regulations, legislation and other Federal agency actions for which comments were issued between Oct. 1, 1976 and Oct. 31, 1976*

Identifying number	Title	General nature of comments	Source for copies of comments
	DEPARTMENT OF DEFENSE		
R-DOD-A11055-00	32 CFR Part 255, Air Installations compatible use zones.	EPA commended DOD's approach to solving this critical environmental problem. EPA suggested that the LDN-60DB contour be plotted and that "C" weighted noise levels be used for intermittant impulse noises.	A
	DEPARTMENT OF INTERIOR		
A-BOR-A61290-00	Proposal for a Formation of a Uniform Recreation Data Classification System Land Use and Land Cover Classification System for Use With Data.	EPA made a number of suggestions for improving this system including the explicit use of water quality criteria as an element of recreational potential of water resources; the addition of flood plains, areas of seasonally high water tables and areas of steep slopes as separate categories for use in describing recreational resources; and the expansion of the public management and administrative aspects of recreational lands to include those under easements or zoning restrictions.	A

Identifying No.	Title		Source of review
R-IGS-A01037-00	30 CFR Part 211, Coal Mining Operating Regulations, Adoption of Requirements of Wyoming's reclamation Laws and Requirements.	EPA generally concurred in the proposed rulemaking, and recommended that specific reference to recently published coal mining point source effluent guidelines be included in the Wyoming reclamation laws and requirements.	A
	DEPARTMENT OF TRANSPORTATION		
R-FAA-A51009-00	Policies and Procedures for Considering Environmental Impacts (Docket No. 15978, Proposed FAA Order 1050.1B) Notice.	EPA commended FAA's development of these comprehensive and thorough regulations and offered several suggestions for further improvements.	A
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
R-HUD-A85040-00	24 CFR Parts 710 and 720, Assistance for New and Communities, 1970 Act, Financing Public and Private Developments.	Based on its review, EPA suggested a change which would require developers to secure all Federal approvals along with those from State and local governmental units.	

APPENDIX VI

SOURCE FOR COPIES OF EPA COMMENTS

Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall, SW, Washington, D.C. 20460.
Director of Public Affairs, Region 1, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.
Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.
Director of Public Affairs, Region 3, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.
Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Cortland Street NE, Atlanta, Georgia 30308.
Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.
Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.
Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.
Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.
Director of Public Affairs, Region 9, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.
Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101,

[FR Doc.76-38104 Filed 12-28-76;8:45 am]

PESTICIDE PROGRAMS

[FRL 662-5; OPP-62001]

Administrator's Decision To Accept Plan of Mississippi Authority and Order Suspending Hearing for the Pesticide Chemical Mirex

On October 20, 1976, the Administrator of the Environmental Protection Agency (EPA) issued an order accepting a Plan submitted by the Mississippi Authority for the Control of Fire Ants (the holder of all registrations for Mirex end-use products) for the gradual phase-out of its Mirex registrations and the suspension of the pending hearing under section 6(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. The following is a compilation of documents that are germane to this action, including (1) the Administrator's order; (2) a letter to Mr. John R. Quarles, Jr. from Mr. Jim Buck Ross which, with its attachments, constitutes the Plan submitted by the Mississippi Authority to the EPA; and (3) a staff-prepared "Summary of Evidence and Other Information and Statement of Reasons" setting forth the Agency's reasons for accepting the Plan. References and Appendices to the "Summary of Evidence and Other Information and Statement of Reasons" are available for inspection in the office of the FEDERAL REGISTER Section, Technical Services Division (WH-569), Office of Pesticide Programs, Rm. 401, East Tower, 401 M St. S.W., Washington, D.C. 20460 from 8 a.m. to 4:30 p.m. during normal working days.

Dated: December 21, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

UNITED STATES OF AMERICA, ENVIRONMENTAL PROTECTION AGENCY, BEFORE THE ADMINISTRATOR

In Re: Public Hearing to Determine Whether or not the Registrations of Mirex Should be Cancelled or Amended.
FIFRA Docket No. 293.

ADMINISTRATOR'S DECISION TO ACCEPT PLAN OF MISSISSIPPI AUTHORITY AND ORDER SUSPENDING HEARING

On September 23, 1976, the Agency's Acting Judicial Officer issued a "Notice of Receipt of Request to Cancel Mirex Registrations and Request for Comments" to all of the parties to this proceeding. After reviewing the proposed "Summary of Evidence and Statement of Reasons" submitted by EPA staff, the comments submitted by the other parties to this proceeding, and the Agency's staff's response to these comments, I have decided to approve the Plan submitted by the Mississippi Authority for the Control of Fire Ants, and adopt the "Summary of Evidence and Statement of Reasons" submitted by the Agency staff, with minor corrections. Accordingly, I hereby direct the Agency staff to take such action as is necessary to implement the Plan in accordance with its terms. Since the only Mirex product whose registration is not cancelled pursuant to the Plan is a technical or manufacturing use only product that can only be used in formulating other end-use products will be cancelled under the Plan, I have determined that it is no longer in the public interest to continue this Public Hearing to Determine Whether or Not the Registrations of Mirex should be Cancelled or Amended.

Accordingly, it is ordered that this hearing is hereby suspended.

Dated: October 20, 1976.

RUSSELL E. TRAIN,
Administrator.

THE STATE OF MISSISSIPPI,
DEPARTMENT OF AGRICULTURE AND COMMERCE,
Jackson, August 31, 1976.

Mr. JOHN R. QUARLES, Jr.,
Deputy Administrator, Environmental Protection Agency, Room 1218 West Tower, 401 M Street, S.W., Washington, D.C.

DEAR MR. QUARLES: Pursuant to our recent conversation regarding the continued use of mirex, we are submitting the following plan for your consideration. The responsible agencies of the nine states infested with the imported fire ant recognize that their immediate responsibility to the people of their respective states is two-fold: to provide an effective means of controlling the imported fire ant while concurrently preventing undue damage to the environment. As there is a question as to the long-range effect that mirex may have on the environment, it is obvious that the best way to minimize this potential danger is to reduce the amount of technical mirex placed in it. Therefore, the Mississippi Authority for the Control of Fire Ants ("Mississippi Authority") has designed the following plan ("Plan") to minimize the amount of mirex to be used; to reduce the size of contiguous areas treated, and to phase-out gradually the current mirex registrations with the objective of replacing current mirex registrations with an unquestionably safe registered material as quickly as possible. The plan shall become effective immediately upon notification by EPA to the Mississippi Authority that the plan is acceptable to EPA.

The plan has the following elements;

I. CANCELLATION OF MIREX REGISTRATIONS

The Mississippi Authority for the Control of Fire Ants requests that the Environmental Protection Agency cancel all of its mirex registrations under Section 6(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act in accordance with the attached suggested cancellation notice. (Attachment A.) The Mississippi Authority hereby waives its right under Section 6(a)(1) to request within 30 days after issuance of such notice that the registrations be continued in effect. The Mississippi Authority also states that it will not give its concurrence to any other person to request that the registrations be continued in effect.

II. SUSPENSION OF THE PENDING MIREX HEARING

The Mississippi Authority for the Control of Fire Ants proposes that upon publication of the attached cancellation notice, the pending hearing under Section 6(b)(2) of the Federal Insecticide, Fungicide and Rodenticide Act should be suspended. It is understood that after publishing its Section 6(a)(1) cancellation notice and after suspending the ongoing Section 6(b)(2) hearings, the Environmental Protection Agency would publish a Statement of Reasons for taking this action. This Statement of Reasons will include a summary of evidence in the

record developed at the Section 6(b)(2) hearing and other information not included in the record bearing on the risks and benefits of mirex use and the merits of this proposal of the Mississippi Authority.

III. RESEARCH

A program to find a suitable alternative chemical to replace mirex has been implemented through the "Cooperative Interagency Agreement for the Study of Alternative Chemicals to Mirex." (See Attachment B). Additionally, the USDA Agricultural Research Service has an ongoing program to screen alternatives to mirex for control of imported fire ants. It is our understanding that Congress has appropriated additional funds to expand this research. The Mississippi Authority for the Control of Fire Ants will make every effort to have this program incorporated into the Cooperative Interagency Agreement.

IV. REQUEST FOR AMENDMENT

The Mississippi Authority for the Control of Fire Ants requests that its mirex 10:5 bait registration (EPA Reg. No. 38962-3) be amended to permit in addition to the methods now provided the packaging of mirex 10:5 bait in five pound bags for ground broadcast or mound-to-mound application by persons affected by the Imported Fire Ant or under the supervision of authorized state or federal personnel. Labels on such five pound bags should specify that the contents may not be applied aerially.

The Mississippi Authority for the Control of Fire Ants feels that the above plan will achieve both of its goals and should receive the support of all affected persons. The Authority urges that you give this proposal very careful consideration.

Sincerely yours,

JIM BUCK ROSS,
Chairman, The Mississippi Authority for Control of Fire Ants.

ATTACHMENT A.—PROPOSED FEDERAL REGISTER NOTICE REQUESTING CANCELLATION OF REGISTRATION OF PESTICIDE PRODUCTS CONTAINING MIREX

Pursuant to Section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) *et seq.*) the Environmental Protection Agency (EPA) has notified the Mississippi Authority for the Control of Fire Ants, PO Box 1609, Jackson MS 39205, of its intention to cancel, in accordance with the following conditions, the registrations of all these products containing the active ingredient Mirex:

Registered products—Mirex

Registrant	EPA registration No.	Product
Mississippi authority for control of fire ants	38962-1	Fire Ant Bait.
Do	38962-2	Fire Ant Bait "150".
Do	38962-3	Granular Bait 2x now 10:5.
Do	38962-4	Granular Bait 4x.
Do	38962-5	Harvester Bait 300.
Do	38962-6	Mirex Special Concentrate (25 percent).
Do	38962-7	Mirex Technical Concentrate (80 percent).
Do	38962-8	Mirex Pelleted Bait 450.
Do	38962-9	A-C Mirex Pelleted Bait 450.
Do	38962-10	Yellowjacket Stopper.

A. PRODUCTION LIMITATIONS AND END DATES FOR USE OF CURRENT-REGISTERED PRODUCTS

1. *Number of Aerial Applications.* No single acre will be treated aerially with Mirex bait on more than one occasion between July 1, 1976 and December 31, 1977.

2. *Mirex 4x Bait.* The effective date of cancellation for Mirex 4x Bait (EPA Reg. No. 218-565) shall be December 1, 1976. Between July 1, 1976 and December 1, 1976 not more than 45,000 pounds of technical Mirex shall be formulated into Mirex 4x Bait. Stocks of Mirex 4x Bait existing as of December 1, 1976 may be used only through December 31, 1976; provided that 1,000 pounds of Mirex 4x Bait may be utilized for research as a control in experiments to determine the efficacy of alternative materials until June 30, 1978.

3. *Mirex 10:5 Bait.* EPA shall amend the Mirex 10:5 Bait registration (EPA Reg. No. 38962-3) to add to that registration by permitting the packaging of Mirex 10:5 Bait in five pound bags for ground broadcast or mound-to-mound application by persons affected by the imported fire ant, or under the supervision of authorized state or federal personnel.

The effective date of cancellation for Mirex 10:5 Bait (EPA Reg. No. 38962-3) shall be December 1, 1977. Between September 1, 1976 and December 1, 1977, not more than 20,000 pounds of technical Mirex shall be formulated into Mirex 10:5 Bait. *Provided,* That, if less Mirex 4x Bait is produced than can be produced with the 45,000 pounds of technical Mirex provided for in paragraph (A)(2) above, up to 15,000 pounds of the amount of technical Mirex not utilized from this 45,000 pound limitation shall be added to the 20,000 pound production limitation for Mirex 10:5 Bait. Stocks of Mirex 10:5 Bait existing as of December 1, 1977 may be applied aerially only through December 31, 1977. Stocks of Mirex 10:5 Bait in five pound bags existing as of December 1, 1977 may be sold, distributed, and used in ground broadcast and mound application until June 30, 1978. Other stocks of Mirex 10:5 Bait existing as of December 1, 1977 may be packaged by the Registrant into five pound bags for sale, distribution, and use in ground broadcast and mound application until June 30, 1978.

4. *Mirex Technical.* The effective date of cancellation for Technical Mirex (EPA Reg. No. 218-585) shall be December 1, 1977. No stocks of Technical Mirex existing as of December 1, 1977 shall be distributed, sold, or used.

5. *Mirex Harvester Ant Bait 300.* The cancellation of the registration for Mirex Harvester Ant Bait 300 (EPA Reg. No. 38962-5) shall be effective immediately for all uses other than for the control of the pheidole ant, the Argentine ant, and the fire ant on pineapples in Hawaii. Presently existing stocks of Mirex Harvester Ant Bait 300 may be distributed, sold, and used for all uses until December 31, 1976. The effective date of cancellation for Mirex Harvester Ant Bait 300 for the control of the said ants on pineapples in Hawaii shall be December 1, 1977. Stocks of Mirex Harvester Ant Bait 300 existing on December 1, 1977 may not be applied aerially for the control of the said ants on pineapples in Hawaii after December 31, 1977, but may be distributed, sold, and used (other than aerially) for this use indefinitely.

6. *Other Mirex Registrations.* The cancellation of all other Mirex registrations shall be effective immediately. Presently existing stocks of materials formulated according to all other EPA Mirex registrations may be distributed, sold, and used until December 31, 1977.

B. ADDITIONAL RESTRICTIONS

1. *Coastal Zones.* Because of the recognized limitations of the coastal county restrictions which were based on political boundaries, and in view of the need to protect embryonic and juvenile marine and aquatic life which is dependent on shallow coastal and estuarine areas, aerial treatment will be precluded within the coastal zone as determined as follows:

The coastal zone shall be determined so as to bring within the zone all of the following areas:

(a) the area between the coastline and a parallel line twelve miles from the coastline; the coastline shall include the shores of any bays or estuaries which are contiguous to the sea;

(b) the area within twelve miles from the furthest inland edge of any coastal, saline marsh; coastal marshes are defined as those areas represented on U.S. Geological Survey maps by the standard marsh symbol with a white background;

(c) the area around major rivers which are subject to a tidal influence which area may be, based on hydrologic and geologic factors, from one-quarter mile to five miles in circumference as measured from the point of tidal influence; a major river is defined as any river which drains an area in excess of 150 square miles. The point of tidal influence is defined as the point at which the mean discharge of the river no longer affects its stage at a mean high tide.

Whenever practicable coastal zone boundaries shall be along topographical features which are easily recognizable by air, such as highways, railroad beds, and rivers.

States that desire relief from the current label restriction against aerial Mirex application in coastal counties may develop a plan in accordance with the criteria contained herein and additional guidelines as found necessary, and may submit the plan to the Office of Pesticide Programs for review and approval. Such plan must be submitted to EPA for approval at least 45 days prior to application. The Office of Pesticide Programs may, by approving the plan in whole or in part, grant relief from the label prohibition against aerial Mirex application in any coastal county to the extent that such aerial application is performed consistently with the plan and any conditions imposed by EPA Office of Pesticide Programs in conjunction with approving the plan. The current coastal county restrictions shall remain in effect for each county for which an acceptable coastal zone plan is not submitted.

2. *Type of Aerial Application.* From July 1, 1976 through December 31, 1976, aerial application shall be made in accordance with current label restrictions except where the restrictions set forth in paragraphs 3 and 4 of these additional restrictions supersede. From January 1, 1977 through December 31, 1977, aerial application shall be made only with helicopters and single-engine aircraft flying at an altitude of no greater than 150 feet and at a speed of no greater than 150 miles per hour; provided that these conditions shall in no way supersede regulations of other agencies, including the Federal Aviation Administration, governing the aerial application of pesticides.

3. *Requests for Non-Treatment.* Prior to any aerial application of Mirex, prominent notice shall be published in local newspapers, at least 20 days but not more than 30 days prior to application, stating what area will be treated and giving any resident of such areas the right to prevent application upon his land. *Provided,* That until December 1,

1976 the required notice may be published at least 10 days, but not more than 30 days prior to application.

4. *Area Limitations Applicable to Aerial Applications.* (a) *Wooded Areas.* Wooded areas are defined as those areas which have trees and which are not used for agricultural purposes. Tree farms or commercial forests shall not be considered areas used for agricultural purposes; however, groves and orchards shall be considered used for agricultural purposes. There shall be no aerial application in contiguous wooded areas except for a 100 yard swath contiguous to treated areas and cleared areas within the wooded area.

(b) *Aquatic Areas.* From July 1, 1976 through December 31, 1976 there shall be no aerial application to any aquatic areas, except for intermittent streams where there is no flow and except for man-made or natural impoundments of water which do not exceed two acres in size and are not commercially fished. However, even these exempted waters should be avoided where possible. After December 31, 1976, there shall be no aerial application of Mirex to any aquatic areas, except for intermittent streams where there is no flow. Intermittent streams are defined as those streams having continuous flow during periods of heavy run-off and no flow during the remainder of the year. Man-made or natural impoundments of water are defined as such impoundments of water occurring on farms that are utilized for purposes such as irrigation, stock watering, and recreation. Aquatic areas are defined to include without limitation estuaries, rivers, streams, wetlands, lakes, ponds, and other bodies of water. The term "wetlands" means those land and water areas subject to inundation by tidal, riverine, or lacustrine floage. Generally included are inland navigable waters, including inland and coastal shallows, marshes, mudflats, estuaries, swamps, and similar areas in coastal and inland navigable waters. There shall be no aerial application where run-off or flooding will contaminate aquatic areas.

(c) *Idle Lands.* Cut-over lands and brush fields that, when left untreated, will not increase infestation exposure to treated lands shall not be treated.

(d) *Other Areas.* Aerial application is permitted (subject to paragraph 3 above) in areas other than those outlined (even though some trees are present), such as agricultural lands, home sites, and devloped portions of public areas; provided that an appropriate state official certifies in writing before each application that he or his employees have inspected the area and there is at least one imported fire ant mound for each one-quarter section to be treated. Certification shall be available for inspection upon EPA request.

5. *Ground Application.* Ground application, whether broadcast by properly calibrated equipment or individually mound treated, is permitted in all areas of infiestation; provided that there shall be no ground application to aquatic and heavily forested areas or areas where run-off or flooding will contaminate such areas. Ground broadcast and mound treatment shall be confined to areas where the imported fire ants are causing significant problems.

6. *Revised Labeling.* Revised labeling in accordance with this notice shall be prepared and submitted by the Mississippi Authority for the Control of Fire Ants for determination by EPA that such labeling conforms to this notice and other provisions of the Act.

7. *Monitoring.* It is understood that a program for human, environmental, and application monitoring of the application of Mirex bait is essential to this agreement. The users will have primary responsibility for application monitoring, subject to EPA oversight.

C. Substitution of Less Toxic Mirex Formulations for *Mirex 10:5 Bait.*

When presented with adequate efficacy data, EPA shall promptly permit substitution of Mirex bait formulations providing for the application of less actual toxicant per acre for Mirex 10:5 Bait (EPA Reg. No. 38962-3). The production limitations, end dates, and other restrictions provided for in this notice shall remain in effect for such substituted formulation.

The Agency has discussed this cancellation action with representatives of the Mississippi Authority for the Control of Fire Ants who have indicated concurrence with the intended cancellation. Moreover, the Mississippi Authority for the Control of Fire Ants has waived its right to request, within 30 days, that the registrations be continued in effect, and has further stated that it will not give its concurrence to any other person to request that the registrations be continued in effect. Accordingly, these registrations are hereby cancelled, effective on the effective dates specified herein.

[ATTACHMENT B]

AMENDMENT NO. 1

The cooperative agreement between the Mississippi Department of Agriculture, Imported Fire Ant Division, the United States Department of Agriculture, Animal and Plant Health Inspection Service, and United States Environmental Protection Agency, Office of Pesticide Programs, for the performance of laboratory and field evaluations of chemicals which can serve as alternatives to mirex in the control of imported fire ants, signed by the parties thereto on October 29, 1975, October 30, 1975, and September 11, 1975, respectively, is hereby amended as follows:

(1) Paragraph IV, Duration of Agreement, is amended as follows: This agreement will cover the period from September 1, 1975, to January 1, 1978.

(2) Paragraph VIII, General Provisions, is inserted as follows: The cost of the work to be performed by the Mississippi Department of Agriculture and Commerce is estimated at $100,000. In its performance the Mississippi Department of Agriculture and Commerce shall comply with the attached General Provisions for Use in Cost Reimbursement Contracts with Educational and Other Nonprofit Institutions, EPA Form 1900-28 Oct. 1973 as amended by the alterations thereto, EPA Form 1900-28 (Revised Mar. 1975) February 27, 1976.

(3) Paragraph VII, Funds, Personnel, and Facilities, seventh paragraph is amended as follows:

EPA will pay the Mississippi Department of Agriculture and Commerce for actual costs incurred in the performance of the services agreed to herein in an amount not to exceed $100,000. The Mississippi Department of Agriculture and Commerce will submit an itemized bill for payment to:

Environmental Protection Agency, Financial Management Division (PM-226), 401 M Street, S.W., Washington, D.C. 20460.

The itemized bill should be submitted quarterly. It should cite the number of this agreement and the following accounting data:

Appropriation	68X0107
Account No.	644932C99C
Document Control No.	K00049

Except as herein expressly provided, all other terms and conditions of the agreement shall remain in full force and effect.

Dated: May 13, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs, EPA.

Dated:

HARRY C. MUSSMAN,
Acting Administrator for Animal and Plant Health Inspection Service, U.S.D.A.

Dated: May 13, 1976.

J. B. ROSS,
Commissioner, Mississippi Department of Agriculture and Commerce.

SUMMARY OF EVIDENCE AND OTHER INFORMATION AND STATEMENT OF REASONS

I. INTRODUCTION

The Environmental Protection Agency has been conducting a hearing under section 6(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, since July 11, 1973, to determine whether registrations for pesticide products containing Mirex should be cancelled or amended. Information adduced at this hearing, and other information which has recently come to light, has prompted the Mississippi Authority for the Control of Fire Ants (Mississippi Authority), the sole registrant of end-use Mirex products, to submit to the Agency a plan (Plan) for the cancellation of its Mirex registrations and a gradual phase-out of Mirex use.

The plan prescribes the ultimate fate of all currently-registered end-use Mirex products. As indicated above, this is the same matter which would be resolved in the FIFRA section 6(b)(2) hearing currently in progress, should that hearing be allowed to continue to a conclusion. Accordingly, the Plan represents the offer of the sole registrant and producer of end-use Mirex products to end this litigation at this point in time on prescribed terms and conditions.[1] This is acknowledged in the Plan itself, in that one of its provisions calls for immediate cessation of the hearing.

The Agency therefore must decide whether to accept the Plan, and suspend the hearings, or reject the Plan and continue the hearings with the objective of implementing some other solution to the question of the ultimate fate of Mirex through the hearing process. This document sets forth the Agency's decision on the question whether to accept or reject the Plan of the Mississippi Authority. As indicated below, the Agency's decision is to accept the Plan.

This document consists of five parts. Part I is this introduction. Part II is a brief procedural history of the Mirex litigation. Part III is a brief summary of available information concerning the risks and benefits of the use of Mirex for its currently registered uses. Part IV is a brief summary of the significant

[1] In essence, the sole producer of the products in question is stating in the Plan that it will no longer produce the products after a set period of time. Accordingly, it follows that no person who desires to use pesticides which would be produced *after* these end dates can complain of these cancellations, because FIFRA does not create any obligation upon a producer to continue to produce a pesticide.

elements of the Plan of the Mississippi Authority (a copy of the Plan itself is also attached). Finally, Part V presents the Agency's decision to accept the Plan, and its rationale for that decision.

The scope and purpose of the various parts of this document are, for the most part, self-explanatory. However, some elaboration is necessary with respect to Part III, which presents a summary of available information concerning the risks and benefits of the use of Mirex for its currently registered uses. The information which is summarized is, for the most part, contained in the hearing record of the Mirex litigation. To some extent, however, information is included which has recently come to light that has not yet been incorporated in the hearing record. As as indicated in more detail below, the summary does not represent the Agency's findings of fact at the conclusion of the Mirex litigation. Rather, it represents an attempt to summarize available information with respect to the risks and benefits of Mirex use in order to provide a basis upon which to make a responsible decision concerning whether or not to accept the Plan of the Mississippi Authority. Obviously, no such decision can be made without reaching conclusions concerning the risks and associated benefits of Mirex use, because the Plan provides for continued production and use of some currently-registered end-use Mirex products during the phase-out period provided for. The Agency cannot assess whether this solution is consistent with the public interest, without some consideration of available information concerning risks and benefits of Mirex use.

II. History

On March 18, 1971, this Agency issued a notice of intent to cancel registrations of pesticide products containing Mirex. The reason for issuing the notice was that evidence concerning the effects of Mirex on humans and other animals raised a substantial question about the safety of continued use of pesticide products containing Mirex. Allied Chemical Corporation, holder of ten of the eleven Mirex registrations, elected to challenge the notice by petitioning, on April 16, 1971, for referral of the matter to a Scientific Advisory Committee pursuant to 7 U.S.C. 135b(c).[2] In its report, submitted with revisions on March 1, 1972, the committee made recommendations which can be summarized as follows:

(1) Mirex registrations should be continued with labeling restrictions to minimize environmental contamination; (2) publicly supported control programs should be limited to infested areas where the imported fire ant is a problem because of proximity to people or interference with agricultural operations; (3) where publicly sponsored programs are unavailable, nonaerial broadcast treatment of lawns, pastures, schoolgrounds, parks, and similar areas by individuals is recommended instead of mound treatment; (4) more information should be obtained in order to establish economic or nuisance threshold levels requiring Mirex treatment, including information regarding rates of reinfestation and population recovery in areas receiving a single bait treatment; and (5) more research should be conducted on the possible hazards of Mirex to man and his environment.

In an order filed May 3, 1972, published in the Federal Register on June 1, 1972 (37 FR 10987), Administrator Ruckelshaus accepted the findings of the Committee and made additional findings of his own. He found that although Mirex is capable of being stored in human adipose tissue, the data regarding Mirex residues in human tissue was extremely fragmentary and inconclusive. He also found that, while one study had clearly shown that Mirex was tumorigenic in mice, the Committee had refrained from labeling Mirex as carcinogenic, because only one species was involved.

Administrator Ruckelshaus concluded that, while at that time the evidence of a threat to human health was not strong, there was a distinct threat to the aquatic environment based upon fish and wildlife residue data as well as laboratory toxicity studies. Consequently, he banned application of Mirex to all heavily forested and aquatic areas and prohibited aerial application in all coastal counties or parishes. In a subsequent order, dated June 30, 1972 and published in the Federal Register on July 6, 1972 (37 FR 13299), Administrator Ruckelshaus reinstated all Mirex registrations and permitted ground broadcast of Mirex if ground application equipment which could be calibrated to deliver the recommended label dosages were utilized. In still another order, dated March 28, 1973 and published in the Federal Register on April 4, 1973 (38 FR 8615), the total ban on application to aquatic areas was modified to exclude intermittent streams and farm ponds not used primarily for human consumption.

Finally in order to resolve the issues still surrounding the use of Mirex, the Administrator issued notice of his intent to hold a hearing pursuant to section 6(b)(2) of FIFRA, to determine whether or not the registrations of Mirex should be cancelled or amended (38 FR 8616, April 4, 1973). On July 11, 1973 public hearings commenced pursuant to section 6(b)(2) of FIFRA. The hearings continued unabated until March 28, 1975, when settlement negotiations commenced. These negotiations continued until July 14, 1975, when the registrant, Allied Chemical Corporation, formally announced that, because a settlement could not be reached on terms acceptable to the United States Department of Agriculture, Allied would no longer actively participate in the proceedings. Moreover, Allied announced that it was ceasing production of Mirex until some viable solution was reached. The hearings then resumed and proceeded intermittently until February 12, 1976, when Allied Chemical Company stated its intention not to resume formulation of Mirex bait in the future. On February 26, 1976, at the request of the parties, the hearings were temporarily suspended, and on May 10, 1976, the Mississippi Authority announced that Allied Chemical Company had transferred its Mirex registrations to the Authority. Since that time the hearings have remained dormant while the Mississippi Authority's counsel have reviewed the case.

III. Summary of Relevant Information Concerning Risks and Benefits of Mirex

As indicated above, a hearing has been in progress under section 6(b)(2) of FIFRA since July 11, 1973, to determine whether or not the registrations of pesticide products containing Mirex should be cancelled or amended. The hearing record now consists of over 13,000 pages of transcript, over 200 exhibits, and includes the testimony of more than 100 witnesses. In addition to the information in the hearing record, information has recently become available on the health effects of Mirex, including some extremely significant information concerning human exposure to Mirex.

Set forth below is a brief summary of the significant available information.[3] It is emphasized that this summary does not purport to serve the function of the findings of fact required at the conclusion of the FIFRA section 6(b)(2) hearing. Rather, it is an attempt to develop a body of information upon which to base a responsible decision concerning whether or not the Plan of the Mississippi Authority should be accepted or rejected. Available information concerning the cancer risk to man resulting from Mirex use is discussed in some detail. This is because the Plan provides for continued production and use of currently-registered Mirex products during the specified phase-out period. In order to assess whether this aspect of the Plan is acceptable to the Agency, it is necessary to assess in some manner the risks to which exposed members of the public will be subjected during this phase-out period. If these risks appeared unreasonable, the Agency would have rejected the Plan and attempted to implement some other solution involving less exposure through the FIFRA hearing process. Indeed, because the question before the Agency is whether the hearings should be terminated short of findings, evidence indicating carcinogenic risk of Mirex must be given special significance. Finally, this summary differs from findings of fact in one other significant respect, i.e. in some instances the information which is summarized is not part of the hearing record, and therefore has not been subjected to cross-examination by other parties to the proceeding.

A. Mirex: Identification and Nomenclature.

"Mirex" is the common name given to a chlorocarbon compound with a chemical formula of C10 C12 and a technical nomenclature of dodecachlorooctahydro - 1,3,4,-metheno-2H-cyclobuta[cd] pentalene; the systematic name of this compound is dodecachloropentacyclo (5.3.0.0^{2,6}.0^{3,9}.0^{4,5}) decane. The term "Mirex" also is used in reference to a bait which is comprised of corncob grits, soybean oil, and the chlorocarbon compound identified above.

B. Current Registrations

There are currently eleven registered products containing Mirex. One, held by Hooker Chemical Company, is a technical product used only in formulating other products (EPA Reg. No. 935-27). All of the rest of the registrations are held by the Mississippi Authority for the Control of Fire Ants. Two of these are used only in formulating other products (EPA Reg. No. 38962-7; EPA Reg. No. 38962-6). One contains 0.5% Mirex formulated into a bait for control of yellowjackets (EPA Reg. No. 38962-10). Two contain 0.450% Mirex formulated into a bait for controlling Texas leaf cuting ants, harvester ants, and fire ants (EPA Reg. No. 38962-8; EPA Reg. No. 38962-9). One contains 0.3% Mirex formulated into a bait for control of western harvester ants, pheidole ants in Hawaii, and assorted other ants (EPA Reg. No. 38962-5). One contains 0.3% Mirex for controlling fire ants in the federal-state cooperative program for imported fire ant suppression (EPA Reg. No. 38962-4). One contains 0.1% Mirex for controlling fire ants in the federal-state cooperative program for imported fire ant suppression (EPA Reg. No. 38962-3). One contains 0.15% Mirex for control of fire ants through ground broadcast and mound treatment (EPA Reg. No. 38962-2). One contains 0.075% Mirex for controlling fire ants through ground broadcast and mound treat-

[2] Prior to the 1972 Amendments, a registrant could challenge a Notice of Intent to Cancel either by requesting a hearing or by requesting referral to a Scientific Advisory Committee.

[3] Citations to Testimony in this document refer to testimony presented in FIFRA 293. Citations to "References" refer to the list of "References" at the end of this document. Citations to "Appendices" refer to the documents appended to this document.

ment (EPA Reg. No. 38962-1). (See Appendix A).

C. CHEMICAL AND BIOLOGICAL CHARACTERISTICS OF MIREX

1. *Impurities and Degradation Products.* Very recent screening analyses of formulated Mirex bait at the Mississippi Authority's formulating plant in Aberdeen, Mississippi, have shown that Kepone is present in Mirex bait at levels up to 0.25 ppm and in technical Mirex at levels up to 2.58 ppm.

Recent research conducted by the United States Department of Agriculture and others has shown that as much as 10% of Mirex applied in the environment either begins as Kepone or is degraded into Kepone over periods of five and twelve years. (Appendix C). Laboratory studies have shown that Mirex can degrade photolyticly into Kepone. (Reference 2)

2. *Persistence.* Because of its unique chemical structure, Mirex is more resistant to chemical attack than other chlorinated hydrocarbons such as DDT, Aldrin/Dieldrin, and Heptachlor. (Alley Testimony at 4). Mirex therefore will likely remain in nonliving (and living) matter for longer periods of time than would such chlorinated hydrocarbon pesticides as DDT, Aldrin/Dieldrin, and Heptachlor. (Alley Testimony at 4). Research performed by USDA and others has shown that as much as 50% of the original Mirex that was applied in 1962 was recovered from soil residues twelve years after treatment. (Appendix C).

3. *Bioconcentration.* Unlike most chemical compounds (Livingston Testimony [II] at 1), Mirex continues to accumulate to higher and higher levels in the brain, muscle, liver, skin, and subcutaneous tissues of mammals to which it is fed as a constant increment of the diet, apparently without reaching a plateau. There appears to be an unlimited capacity for accumulation of Mirex in some animal tissues, and Mirex can accumulate in vertebrate animals to extremely high levels. (Gibson Testimony at 3; Gibson TR 157, 165, 168).

Moreover, Mirex bioaccumulates in wildlife and the food of wildlife, including *Crustaceans* (Lowe Testimony at 6; Tagatz Testimony at 4; Bookhout Testimony at 10; Bookhout TR 1989), *Ciliate protozoa* (Cooley Testimony at 2-3; Cooley TR at 8905-8), and *algae* (Hollister Testimony at 3). At even the most primary trophic levels in the environment the bioconcentration of Mirex has been demonstrated, often at levels thousands of times that found in aquatic media.

In addition, Mirex is highly resistant to metabolic attack, and as a consequence is apparently not eliminated from vertebrate bodies as a result of metabolic conversion (Gibson Testimony at 50), nor is it readily excreted through normal excretory channels. (Reference 3). However, Mirex can be excreted through special mechanisms, such as lactation and via egg yolks. (Reference 4 at 5-7; Kimbrough Testimony at 9). The sigficance of these special pathways of Mirex elimination is two-fold. First, man is a consumer of products which are the vehicles of such special elimination in other species. Second, since it has been shown that cows will eliminate significant quantities of Mirex in their milk, it is reasonable to expect that Mirex will also be excreted in the milk of female human beings and thus transmitted to their offspring via breast feeding. (Gibson Testimony at 6).

Mirex is transferred through the placenta in rates. The placenta constitutes a barrier between the fetus and the mother which is designed to protect the fetus. Dr. Renate Kimbrough characterized the finding in rats as a "warning signal" that it may also take place in human beings. (Kimbrough Testimony at 12).

4. *Biomagnification.* Mirex biomagnifies in higher-level organisms as it moves up the food chain to man (Livingston Testimony [II] at 2-3; Cowley TR 8926). Mirex's great persistence in the environment and its propensity to bioaccumulate and biomagnify mean that even though it is applied at relatively small application rates, it will be available for consumption by humans, wildlife, and marine and aquatic organisms for long periods of time. (Alley Testimony at 4; Plapp Testimony at 10-11).

D. MIREX TOXICITY TO HUMANS.

1. *Carcinogenicity.* Two experiments have been performed to date concerning the carcinogenicity of Mirex. The first was abioassay in mice completed by Bionetics Research Laboratories, Inc. in 1969 under a contract with the National Cancer Institute. Mirex was tested in this bioassay (hereinafter referred to as First Bionetics) along with 120 other industrial chemicals in an effort to screen out and identify those compounds which were carcinogenic. Both sexes of two hybrid strains of mice were administered Mirex, with 18 animals in each sex-strain subgroup given Mirex orally and other mice of the same strain receiving subcutaneous injections. Oral administration of Mirex commenced by stomach tube when test mice were 7 days of age, and after 4 weeks the mice were weaned and given 26 ppm of Mirex in their diet, a dose which had earlier been calculated to be the maximum tolerated dose. Administration of Mirex continued in this fashion for the life time of the test animals. Negative control animals—those not exposed to Mirex at any time during their lifetime—were kept in the same room with Mirex-exposed animals, and positive control animals were exposed to seven known carcinogenic agents to assure that a carcinogenic reaction would be produced in the strains under test. Only the results of the oral administration of Mirex were reported thereafter (Reference 5) and reviewed in testimony presented in FIFRA 293.

A second carcinogenesis bioassay of Mirex (hereinafter referred to as Second Bionetics) was conducted with Charles River caesarean derived (CD) rats exposed to a calculated maximum tolerated dose of 100 ppm and also to one-half that amount, 50 ppm. Control animals were kept under identical conditions as exposed rats. Mirex was administered for 18 months, with the surviving rats being held for an additional six-month observation period before being killed for necropsy. This bioassay, which was performed simultaneously with tests on 16 other compounds, was completed and reported by Litton-Bionetics, Inc. in 1973. The National Cancer Institute has very recently issued a final report on this experiment.[4]

(a) *The first bionetics experiment (mice).* The results of the First Bionetics Experiment were published in the Journal of the National Cancer Institute in 1969. (Reference 11) That report stated that Mirex induced a highly statistically significant (P less than 0.01) increase of liver hepatomas in both sexes of both strains of mice in which it was tested. The Mirex-induced response roughly equalled that of the response induced by the seven positive-control chemicals. Because of this strong response, the Report listed Mirex among eleven of the 120 compounds judged to be "clearly tumorigenic" for the strains of mice used at the dose levels tested.[5]

The word "hepatoma" was used in the report to denote both benign and malignant tumors. In fact, in the opinion of the pathologists who collaborated in the report, it seemed more reasonable to conclude that the great majority of the tumors observed had malignant potentiality. (Reference 11 at 1114.) Dr Paul Kotin, who designed the experiment, testified that he had personally examined some of the slides taken from this experiment with the chief pathologist, J. R. M. Innes, and had observed liver cancers (hepatocellular carcinomas) which Innes, later reported as hepatomas. There was no basis, therefore, for distinguishing between "hepatomas" and "carcinomas." (Kotin TR 1692-3). Independent pathological diagnoses of the First Bionetics slides by Dr. Melvin D. Reuber, one of the most experienced and imminent researchers into the process of carcinogenesis in test animals, and statistical analyses of the diagnoses by Dr. Adrian Gross, Assistant Director for Scientific Coordination in the Office of Pharmaceutical Research and Testing of the Bureau of Drugs of the Food and Drug Administration, demonstrated that Mirex induced a highly statistically significant increase in liver cancers (hepatocellular carcinomas) in both strains and both sexes of test animals as compared with the control animals in this experiment. (Reuber Testimony at 11; Gross Testimony at 11.)

However, Dr. Paul Newberne, another well qualified pathologist, has prepared testimony for the Mirex hearing that disagrees with both Dr. Reuber and the pathologists who participated in the report of the First Bionetics Experiment. In his opinion, none of the lesions induced in the test animals could be classified as hepatocellular carcinoma. (Newberne Prepared Testimony at 9). He observed a number of hyperplastic nodules, but these represented to him only one of the several ways that liver cells respond to Mirex.

The Advisory Panel on the Carcinogenicity of Pesticides of the Commission on Pesticides and their Relationship to Environmental Health, appointed by the Secretary of Health Education and Welfare in April 1969, placed Mirex in a group judged "positive for tumorigenicity" on the basis of the First Bionetics report (Reference 6 at 461.) The Report of the Mirex Advisory Committee of the National Academy of Sciences concluded that in this experiment "Mirex is very close to being equal in carcinogenic potency to the seven known carcinogenic compounds." How-

[4] In addition to these two bioassay experiments, there have been two very recent experiments performed on mice and rhesus monkeys by the Center of Experimental Pathology and Toxicology of Albany Medical College for Allied Chemical Corporation. In the monkey experiment a total of eight monkeys were exposed to different doses of Mirex for periods ranging from one year, five months to three years, one month. No carcinogenic effect was reported. However, because of the small number of animals employed and the short durations of exposure, the significance of this study is highly questionable.

In the other experiment Mirex was fed to mice at 0.2 ppm for twenty months. The tissue slides from this experiment have been analyzed by only one pathologist and no statistical analysis has been performed on that diagnoses. A disturbing aspect of the experiment is that Mirex was found in the tissues of the control animals. Until further analysis is made of this study, its significance is unclear.

[5] All of the Mirex exposed mice died before the conclusion of the experiment. It is reasonable to conclude that some of the treated mice that died without tumors likely would have formed such tumors by the end of the experiment had they lived to the end of the experiment. (Reuber Testimony at 13; Gart Testimony at 9.)

ever, the Advisory Committee was of the opinion that carcinogenic activity in mice alone had no particular significance for human health. Nevertheless, the Advisory Committee "urgently desired" that Mirex be tested for carcinogenicity in other species.

(b) *The second bionetics experiment (rats).* In September, 1973, Dr. Melvin Reuber examined the tissue slides taken from the Second Bionetics experiment. Dr. Reuber determined that none of the 20 female and 20 male control rats developed either hyperplastic nodules or carcinomas of the liver. He further determined that 2 out of 26 males and 1 out of 26 female rats fed 50 ppm and 7 out of 26 males and 2 out of 26 females fed 100 ppm developed liver cancer. (Reuber Testimony at 12.) Dr. Adrian Gross statistically analyzed Dr. Reuber's diagnoses and determined that there was a highly statistically significant increase in liver cancers in males fed 100 ppm and in combined males and females fed 100 ppm over the control animals. (Gross Testimony, Table 2.)

In addition to carcinomas, Dr. Reuber also diagnosed a very high incidence of hyperplastic nodules of the liver in both sexes of rats at both 50 ppm and 100 ppm feeding levels. (Reuber Testimony at 12.) Dr. Gross statistically analyzed Dr. Reuber's diagnoses and determined that Mirex induced a highly statistically significant increase in hyperplastic nodules in both sexes of rats at both feeding levels. (Gross Testimony (IV), Table 2.) Dr. Reuber testified that he defined hyperplastic nodules as nodules that have reached the stage where they are no longer dependent upon continued exposure to the chemical stimulus. If the chemical is discontinued, these nodules will continue to progress and become carcinomas. (Reuber Testimony at 3.)

Dr. Newberne prepared testimony for the hearing in which he disagreed with Dr. Reuber's diagnoses. Dr. Newberne stated that he observed no hepatocellular carcinomas in the Mirex-exposed rats, and the hyperplastic nodules he observed did not pose a carcinogenic threat to the animals. Dr. Newberne felt that the hyperplastic nodules he observed were only of "academic interest in a safety evaluation of a substance." (Newberne Prepared Testimony at 35). He was of the opinion that "hyperplastic nodules definitely do not all progress and become carcinomas."

The National Cancer Institute had not published a final report on the Second Bionetics Experiment at the time the witnesses testified in the hearing. However, Dr. Robert Squire, who was at the time Expert Consultant to the National Cancer Institute, Carcinogenesis, Division of Cancer Cause and Prevention, testified that he had examined the slides from the Second Bionetics Experiment and had concluded that Mirex is carcinogenic in rats. (Squire Offer of Testimony at 5–7.) Dr. Squire further testified that the nodular hyperplasia that he observed was pre-carcinogenic. He testified that "there is evidence that given sufficient time and exposure, liver cancer would develop in a substantial percentage of the hyperplastic instances such as I have observed here." (Squire Offer of Testimony at 4.) [6] Dr. Newberne's testimony did not take issue with Dr. Squire's diagnoses.

Dr. Umberto Saffiotti, who was at the time Associate Director for Carcinogenesis, Division of Cancer Cause and Prevention, National Cancer Institute, testified that it was his understanding that the NCI reevaluation of the tissue slides led to the recognition of a significant induction of liver tumors in the test animals by Mirex. (Saffiotti Testimony at 2.)

In April, 1976, Dr. Norbert P. Page, Chief, Carcinogen Bioassay and Program Resources Branch, Carcinogenesis Program, National Cancer Institute, provided EPA with NCI verified slide-by-slide diagnoses of the Second Bionetics Experiment. These diagnoses were statistically analyzed by Dr. Todd Thorslund, an EPA statistician. His analysis revealed that Mirex caused by a highly statistically significant increase in carcinomas in male rats, and a highly statistically significant increase in "neoplastic nodules"[7] in both sexes. (Appendix D.)

The very recent National Cancer Institute Report on the Second Bionetics Experiment, which has not yet been published, sets forth the opinions of NCI personnel on the Second Bionetics experiment. (Appendix G) The incidence of cancerous and pre-cancerous lesions diagnosed by the NCI pathologists corresponds rather closely to the incidence observed by Dr. Reuber. No carcinomas or neoplastic nodules were observed in any of the control animals. One low dose male, four high dose males, and one high dose female had liver cancers (hepatocellular carcinoma). In addition, two low dose males, four low dose females, seven high dose males and four high dose females had neoplastic nodules. About the neoplastic nodules the paper reported that:

"It has been shown by several workers that this type of lesion has, under appropriate circumstances, a high probability of progressing to hepatocellular carcinoma. Furthermore, neoplastic lesions or carcinomas rarely occur in rats as was true in these control animals, and also in the pooled control population and such neoplastic lesions are characteristic of the early response to known carcinogens. It therefore is inadequate to call such nodules merely hyperplastic which belies their neoplastic nature and malignant potential."

The paper finally concludes that: "The spectrum of lesions observed in the liver of the various groups at risk suggest carcinogenic activity."

c. *Implications for Man.* The First and Second Bionetics Experiments provide substantial evidence that Mirex is a human carginogen. The EPA's "Interim Cancer Assessment Procedures" (41 FR 21402, May 25, 1976) provide:

"General Principles Concerning the Assessment of Carcinogenesis Data. The central purpose of the health risk assessment is to provide a judgment concerning the weight of evidence that an agent is a potential human carcinogen and, if so, how great an impact it is likely to have on public health.

"Judgments about the weight of evidence involve considerations of the quality and adequacy of the data and the kinds of responses induced by the suspect carcinogen. The best evidence that an agent is a human carcinogen comes from epidemiological studies in conjunction with confirmatory animal tests. *Substantial evidence is provided by animal tests that demonstrate the induction of malignant tumors in one or more species including benign tumors that are generally recognized as early stages of malignancies.* Suggestive evidence includes the induction of only those nonlife-shortening benign tumors which are generally accepted as not progressing to malignancy, and indirect tests of tumorigenic activity, such as mutagenicity, in-vitro cell transformation and initiation-promotion skin tests in mice." [Italics added.]

This approach to the problem of identifying substances which pose a carcinogenic risk to man is generally supported by the final report of the National Cancer Institute's National Cancer Advisory Board Subcommittee on Environmental Carcinogenesis entitled "General Criteria for Assessing the Evidence for Carcinogenicity of Chemical Substances." That report states:

"The carcinogenicity of a substance is established when the administration to groups of animals in adequately designed and conducted experiments results in increases in the incidence of one or more types of malignant neoplasms [or a combination of benign and malignant neoplasms] in the treated groups as compared to control groups maintained under identical conditions but not given the test compound. The increased incidence of neoplasms in one or more of the experimental groups should be evaluated statistically for significance, and the only major experimental variable between the control and the experimental group should be the absence or presence of the single test agent. Such increases may be regarded with greater confidence if positive results are observed in more than one group of animals or in different laboratories. The demonstration that the occurrence of neoplasms follows a dose-dependent relationship provides additional evidence of a positive result.

"The occurrence of benign neoplasms raises the strong possibility that the agent in question is also carcinogenic since compounds that induce benign neoplasms frequently induce malignant neoplasms. In addition, benign neoplasms may be an early state in a multi-step carcinogenic process and they may progress to malignant neoplasms; also, benign neoplasms may themselves jeopardize the health and life of the host. For these reasons, if a substance is found to induce benign neoplasms in experimental animals it should be considered a potential human health hazard which requires further evaluation. In experiments where the increased incidence of malignant neoplasms in the treated group is of questionable significance, a parallel increase in incidence of benign tumors in the same tissue adds weight to the evidence for carcinogenicity of the test substance."

Dr. Reuber provided further support for this approach in his testimony in FIFRA 293. He testified that carcinogenesis in man can be detected or reliably predicted in either of two ways. The first is by valid epidemiological evidence, i.e., by the observation of groups of human beings, one of which has been exposed to the compound in question and the other of which has not. Tumor incidence is then compared among individuals of both groups according to age, sex and other characteristics. (Reuber Testimony at 20). The second is by examining the effects of a particular substance on mammalian

[6] On August 20, 1976, Dr. Squire sent a memorandum to EPA's Cancer Assessment Group summarizing his evaluation of the Second Bionetics Experiment. In that memorandum Dr. Squire stated that "there is a marginally significant result for hepatocellular carcinomas in male rats; however the high dose response itself is not significantly higher than the control response. Neoplastic nodules in male rats show a significant response when comparing high dose with controls. The test among females was not significant * * *. Although the results indicate there may be a hepatocarcinogenic effect, the small animal group sizes and the small number of animals with liver neoplasms do not permit a firm determination." (Appendix E.)

[7] Between 1973 and 1976 the nomenclature for rat tumors changed among many pathologists from "hyperplastic nodule" to "neoplastic nodule."

species other than man. (Reuber Testimony at 19–20).

With many variables inherent in such experiments, it is extremely difficult to obtain valid epidemiological data for chemical carcinogens in human beings. (Reuber Testimony at 10–20; see also Reference 6 at 463; Reference 7 at 27). It is all the more difficult when the compound under test is a pesticide which is found widely in the environment and for which suitable control groups may therefore be difficult or impossible to establish. (Reuber TR 8,696). For Mirex there is as yet no epidemiological data. (Reuber Testimony at 20). Therefore the carcinogenic risk to man posed by Mirex must be determined by examining its effects on species other than man.

The formation and occurrence of tumors in man and in such test animals as hamsters, mice, and rats is very similar. Kotin TR 1,629). Hyperplastic lesions are found in both man and test animals, and morphologic features of tumors are the same, both grossly and microscopically. Reuber Testimony at 19–20). Carcinogens in all mammalian systems are characterized by irreversibility of effect. Upon the transformation of a cell from its normal condition to a neoplastic state, that cell will reproduce, as will the cells it produces; this process may be initiated by only a small quantity of a carcinogenic agent, and only a small number of neoplastic cells may be required to keep this process of carcinogenesis alive. (Reuber Testimony at 18; see also Reference 7 at 32). Beyond a certain point in this process, moreover, the carcinogenic stimulus can be removed and the progression toward carcinomas will continue. (Reuber Testimony at 18). That point is reached when hyperplastic nodules are observed. (Reuber Testimony at 3).

The First and Second Bionetics Experiments demonstrate that Mirex induces malignant tumors (hepatocellular carcinomas) in mice and rats including benign tumors that are generally recognized as early stages of malignancies ("hyperplastic nodules" or "neoplastic nodules"). Therefore, under the "Interim Cancer Assessment Procedures", substantial evidence exists that Mirex is a human carcinogen. The weight of this evidence may be reduced slightly by Dr. Newberne's apparent disagreement with Drs. Innes, Reuber, and Kotin with regard to the First Bionetics Experiment and with Drs. Reuber and Squire with regard to the Second Bionetics Experiment. However, the evidence is certainly strong enough to support a holding that Mirex is a potential human carcinogen. The carcinogenic risk that Mirex poses to man therefore depends on the extent of human exposure to Mirex.

E. EFFECTS OF MIREX ON WILDLIFE

1. *Avian Species.* The lethal toxicity of Mirex to most birds is low and there is little potential for lethality at current levels of Mirex field applications. (Lincer Testimony at 9–10). At these levels of application no perceptible reproductive effects would be caused in avian species that have been tested thus far. (Lincer Testimony at 11).

2. *Fish.* Although Mirex is not directly lethal to fish at environmentally realistic levels of exposure (Reference 8 at 75), Mirex has the potential for causing widespread change in populations and communities of aquatic ecosystems. (Livingston Testimony at 5).

3. *Crustaceans.* Laboratory experiments have demonstrated that Mirex is highly toxic to crustaceans, often at miniscule levels of exposure. Effects arising from exposure to Mirex range from short-term lethality to more prolonged and subtle consequences for the development of these organisms. (Lowe Testimony; Ludke/Finley Testimony).

4. *Non-target Insects.* Tests have shown that one application of 0.018 pounds of technical Mirex per acre reduces the population of carabid and staphylinid beetles by 60 percent and 67 percent respectively. (Hensley Testimony at 3; Reference 10; Hensley TR 2,727). These insects are among the natural predators of the sugarcane borer. (Hensley Testimony at 3).

F. TRANSPORT OF MIREX

Mirex leaches from Mirex bait into sea water. (Tagatz Testimony at 5; Reference 11 at 4). Mirex can be leached from Mirex bait by fresh water, and it can thereafter enter a salt water environment. (Tagatz Testimony at 5). Studies have shown that Mirex residues in water resulting from fresh water runoff after application of Mirex in the watershed range from 0.1 to 1.0 parts per trillion in fresh runoff waters. (Alley Testimony at 7–8). Mirex is transported into aquatic organisms, including edible fish, from nearby treated lands. (Duke Testimony at 7, Duke TR 1,901).

G. RESIDUES OF MIREX IN THE ENVIRONMENT

Mirex is chemically identical to the compounds known as "Dechlorane" and "C10 Cl_{12}." "Dechlorane" was marketed from 1959–72 as a fire retardant in plastics and polymers. "C10 Cl_{12}" has been marketed for only a short period of time for limited pyrotechnical usage. (Alley Testimony at 12). Dechlorane cannot escape from the plastics and polymers in which it is used until they degrade. Many of these plastics and polymers are, however, non-degradable by environmental action. (Alley Testimony at 12). Since Mirex residues generally exist only in areas treated with Mirex, it is safe to assume that residues observable in the environment are due to application of the pesticide Mirex. (Alley Testimony at 12–13; Alley TR 4,292, 4,293–8; Enos Testimony [II] at 1; Lincer TR 8,972–74; Puma TR 5,215–24).[8]

1. *Mirex Residues in Human Beings.* Dr. F. W. Kutz presented the results of the EPA's National Human Monitoring Program (NHMP) up to the time he testified in the hearing. Samples were taken after that time but not yet completely analyzed as of the date of Dr. Kutz's appearance. A total of 1,400 samples had been collected nationwide and analyzed at the time Dr. Kutz testified. Only since 1970 have NHMP analytical techniques been geared to detect Mirex in particular (Kutz TR 5,456), and the incidence of Mirex residues in human beings, as presented in the testimony of Dr. Kutz, was based on samples taken up to only April, 1972. (Kutz TR 5,470). Dr. Kutz testified that Mirex had been found in nine samples of human adipose tissue, all of which came from states that receive Mirex treatment. The nine positive samples were found in a total of 329 samples taken by the NHMP in eight states. Dr. Kutz stressed, however, that in reporting these NHMP results he could draw no conclusions concerning the statistical incidence of Mirex residues in human beings residing in these eight states. (Kutz Testimony [II] at 4, Kutz TR 5,450).

Recognizing a need to obtain a better indication of the extent of Mirex residues in human beings in Mirex treated states, EPA began a monitoring study early in Fiscal Year 1976 that, except for some control samples, limited itself to the states in which Mirex is applied as a pesticide. More than 40 collecting sites were recruited in addition to the ones already collecting for the national program. Although the collecting and analysis is not yet completed, the results so far show that Mirex is present in the adipose tissue of from 21 percent of the human beings in the states where Mirex is applied. The percentages are much higher in states that receive heavy Mirex treatment. (Appendix F). The average residue of Mirex in the positive samples analyzed to date is 0.38 ppm with a range from trace to 1.32 ppm. Five of the positive samples have been verified by mass spectrographic methods to eliminate any possible confusion with other compounds that could result from gas-liquid chromatograph analysis. These results represent a significant addition to the Agency's information about human exposure to Mirex.

2. *Mirex Residues in Human Foods.* Mirex residues are not observed with any great frequency in the national food monitoring programs conducted by FDA and USDA. (Puma Testimony at 6–7). However, these programs are not entirely adequate for determining human exposure to Mirex via the diet. (Puma Testimony at 13–15). All three programs (FDA Total Diet Survey, FDA Pesticide Program, and USDA Animal and Plant Health Inspection Service) are national programs that do not focus on areas of Mirex application. (Puma Testimony at 13). The multi-residue analysis techniques used in these programs are less sensitive than more specialized investigations. (Puma Testimony at 14, Puma TR 5,277). Even after multiple extractions, a reported residue in the FDA programs will represent only about 70 percent of Mirex actually present in an analyzed sample, while the USDA reported residue will represent only about 50 percent. (Puma Testimony at 16, Puma TR 5,330). More sensitive surveys directed toward Mirex treated areas detect Mirex residues in animals which could be consumed by man, including fish (Reference 12; Reference 13 at Table 22); crayfish (Reference 14 at 13); salt water crustacea (Reference 12); fowl (Reference 13 at 17–20); deer (Reference 13 at 16) and beef (Reference 15; Reference 13 at 16). No evidence was presented in the hearing to indicate whether the species sampled were eaten by humans. Mirex has also been detected in three samples of cow's milk (Reference 13 at 21).

3. *Human Exposure to Mirex.* Dr. Kutz's recent data make it very clear that human beings in the South are being exposed to Mirex. The average level of Mirex that is present in those human beings is of considerable concern. This is not surprising given the readiness with which mammalian fatty tissue absorbs Mirex.

The route of human exposure to Mirex is unclear, but the high incidence of detection of Mirex in animals that are consumed by humans indicates that one of the routes of Mirex exposure is via the diet. The average daily intake of Mirex is also unknown. Extrapolation from levels present in adipose tissue is virtually impossible. However, since many humans (21 percent of the samples analyzed) are exposed to this potential human carcinogen, it is clear that Mirex use in the South according to its current registrations poses a carcinogenic risk to man.

H. BENEFITS OF MIREX

1. *Southern United States.* (a) *Description of the Fire Ant and its Habitat.* Fire ants presently infest parts of nine states in the Southeastern United States: Texas, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, and North Carolina. (Holloway Testimony, Figure 5). Whether the fire ant is likely to spread beyond the present

[8] The possibility still remains that some of the observed exposure is occupational. The Agency is presently conducing an inquiry into this possibility.

areas of infestation is subject to dispute. The peripheral boundary of fire ant infestation has not changed significantly since 1959, indicating that the fire ant has reached the extent of its ecological range. (Holloway Testimony at 25; Buren Testimony at 5). Several experts have testified that the fire ant could potentially infest large areas of the United States that are presently uninfested. (Markin Testimony at 9; Glancey Testimony at 23). However, there is no evidence that Mirex application has prevented the spread of the fire ant into areas where it is not otherwise limited by ecological factors. Thus, Mirex application is not necessary to prevent the spread of the fire ant beyond its current ecological range. (Holloway Testimony at 25).

(b) *Harm to Humans from Fire Ants.* The fire ant inflicts a painful sting upon humans. However, compared to many large tropical ants, wasps, or honeybees, the sting is comparatively mild. To a normal person who experiences a normal reaction, a sting is only a brief but painful incident, the effects of which disappear in a few minutes, although within 24 hours a small pustule is formed which can leave a scar. (Martin Testimony at 20–21). The fire ant is different from other stinging insects in its aggressiveness; if a person disturbs a fire ant mound he can be stung many times. (Martin Testimony at 21). Fire ant stings can give rise to secondary infections if not properly cleaned and cared for. (Triplett Testimony at 6–8). In a very small number of very sensitive persons fire ant stings, like other venomous insect stings, can result in anaphylactic shock, which is accompanied by difficulty in breathing and decrease in blood pressure. (Triplett Testimony at 9; Rhodes Testimony at 16). In very rare cases this requires special therapy. (Rhodes Testimony at 13). Hyposensitization treatment can be employed by doctors to build up immunity to fire ant stings in persons who are likely to experience anaphylactic shock from fire ant stings. (Rhodes Testimony at 17).

Fire ants are generally very easy for human beings to avoid, because their mounds are easily detected. (Yelderman Testimony at 3; Tschinkel Testimony at 43). Nevertheless, a large number of people receive fire ant stings yearly in infested states. Still, several experts have testified that as a human pest, the fire ant ranks well below many other biting insects such as wasps, chiggers, horse flies, mosquitoes, bees, sand flies, and stable flies. (Tschinkel Testimony at 44; Appendix H; Ferguson Offer of Testimony at 12).

In fact, fire ants may have some beneficial impacts on human health. Fire ants prey upon control harmful insects, such as lone star ticks. (Yelderman Testimony at 3; Holloway Testimony at 70; Hensley Testimony at 9). Ticks can cause serious illnesses including tularemia, Rocky Mountain Spotted Fever, and Relapsin Tick Fever. (Yelderman Testimony at 3).

(c) *Harm to Agriculture from Fire Ants.* Fire ants can interfere with hand harvesting of citrus, cotton, strawberries, tung nuts, and pecans in fields that are infested with fire ants. (Brown Testimony at 2–3; Ueltshey Testimony at 3; Block Testimony at 3). Additionally, fire ant mounds can interfere with harvesting machinery. (Bruer Testimony at 9; Senn Testimony at 4–5; Carlton Testimony at 2). But this only occurs in areas with clay soils. (Buren Testimony at 3). There have been reports of injury to livestock, farm animals, hay, pasture land, soybeans, and other crops due to fire ants.

Despite these reports, many experts testified that fire ants present an insignificant risk of harm to agriculture. (Yelderman Testimony at 3; Ferguson Offer of Testimony at 12; Tschinkel Testimony at 43–44; Holloway Testimony at 67–68). In fact, fire ants prey upon and help control several kinds of insects that are harmful to agriculture, including the sugarcane borer. (Holloway Testimony at 71; Hensley Testimony at 3; Reference 16).

(d) *Efficacy of Mirex.* When Mirex is applied in adequate amounts near fire ant mounds and properly foraged, the population of fire ants in the mound is severely reduced. (Lincoln Testimony at 5; Holloway Testimony at 52–53; Markin Testimony at 28). This can result in elimination of the entire colony. (Holloway Testimony at 53). If, however, Mirex bait is not foraged within one or two days after application, it can become rancid and unattractive to the ants. (Holloway Testimony at 54; Markin Testimony at 28).

When fire ants reinfest an area that has been treated with Mirex, they come back in even greater numbers than the pre-existing concentration. (Tschinkel Testimony at 44; Holloway Testimony at 10). Competition for food and territory gradually forces the fire ant population down to the pre-existing equilibrium after approximately 2–3 years. (Tschinkel Testimony at 41; Holloway Testimony at 9–10).

2. *Hawaii.* The pineapple mealybug wilt disease is a disease caused by the feeding of pineapple mealybugs, which leave toxic saliva in the pineapple plant. From the effect of the toxic saliva the root system of the pineapple plant completely collapses in a short time. (Sakimura Testimony at 2). Large numbers of mealybugs must feed for an extended time on the pineapple plant before the plant is affected. Lightly infested plants may not show the disease symptoms. Therefore, Hawaii is able to keep the pineapple plants free from disease as long as the mealybug infestation level is kept low by control measures. Mealybug wilt disease will cause affected plants not to produce any marketable fruit. If no control measure is applied against the mealybug, the disease spreads rapidly and extensively. Ants carry mealybugs to and from pineapple plants and protect or attend the mealybug colonies on pineapple plants. (Sakimura Testimony at 3, 5). Ants transport mealybugs from old pineapple plants to new succulent plants which provide a better supply of honeydew. Ants also attend mealybugs by removing excretions harmful to mealybugs and protecting mealybugs from attacks by predators or parasites. (Sakimura Testimony at 6). Ants are, therefore, largely responsible for moving the mealybugs and spreading incidence of the wilt disease. With absence of ants in the fields, there will be little spread of the disease. An annual application of Mirex Harvester Ant Bait "300" at a rate of two and one-half pounds of formulated product per acre (applied by fixed wing aircraft) with supplemental Heptachlor applications, where necessary, has been shown to be effective in controlling the ant population in Hawaiian pineapple fields to a low level. (Terry Testimony at 5).

I. ALTERNATIVES TO MIREX

1. *Southern United States.* Chlordane is the only registered alternative to Mirex for the control of fire ants in the southern United States. Chlordane is presently the subject of an ongoing cancellation hearing. For this use Chlordane is applied at a rate of two pounds per acre. Other unregistered alternatives, such as diazinon, dimethoate, and juvenile hormones show some promise, but have not been adequately tested.

2. *Hawaii.* Heptachlor is registered for control of ants in Hawaii. Mealybugs can be controlled by diazinon, parathion, and malathion. However, there was testimony that these pesticides are not adequate to control subterranean mealybug infestations. (Sakimura Testimony at 6.)

IV. THE MISSISSIPPI AUTHORITY'S PLAN

On August 31, 1976 the Mississippi Authority for the Control of Fire Ants, the current holder of ten of the eleven Mirex registrations, submitted to the Deputy Administrator of the Envirnomental Protection Agency a plan "to minimize the amount of Mirex to be used; to reduce the size of the contiguous areas treated, and to phase-out gradually the current Mirex registrations with the objective of replacing current Mirex registrations with an unquestionably safe registered material as quickly as possible." The Plan has several important elements.

A. PRODUCTION LIMITATIONS AND END DATES FOR USE OF CURRENT REGISTERED PRODUCTS

Assuming the Plan is adopted, the Mississippi Authority requested pursuant to section 6(a)(1) of FIFRA, that the Mississippi Authority's Mirex registrations be voluntarily cancelled in accordance with a prescribed phase-out schedule and certain production limitations.

1. *Mirex 4X Bait.* Mirex 4X bait is the bait currently used in the Joint Federal/State Fire Ant Program aerial application. Mirex 10:5 bait is a new Mirex formulation that calls for the application of approximately 70% less pure Mirex per acre than Mirex 4X bait. The effective date of cancellation for Mirex 4X bait is December 1, 1976, with use of existing stocks through December 31, 1976. Not more than 45,000 pounds of technical Mirex may be formulated into Mirex 4X bait between July 1, 1976 and December 1, 1976, when the cancellation will become effective. If less than 45,000 pounds of pure Mirex are utilized prior to December 1, 1976 for formulation into Mirex 4X bait, up to 15,000 pounds of pure Mirex may be carried over for formulation into Mirex 10:5 bait during 1977. The 45,000 pound limitation will allow for a somewhat larger Mirex Program this fall than has been carried out in the past. During this fall, aerial application Mirex may be applied from multi-engine aircraft as has been the case in the past.

2. *Mirex 10:5 Bait.* Under the Plan, the effective date of cancellation for Mirex 10:5 bait is December 1, 1977. Stocks of Mirex 10:5 bait may be applied aerially through December 31, 1977. Remaining stocks of Mirex 10:5 bait existing as of December 1, 1977 may be packaged into five pound bags[10] for sale, distribution and use in ground broadcast and mound application until June 30, 1978. If 45,000 pounds of technical Mirex is formulated into Mirex 4X bait during the Fall of 1976, only 20,000 pounds of technical Mirex may be formulated into Mirex 10:5 bait during 1977. However, depending upon the amount of technical Mirex fromulated into Mirex 4X bait in Fall, 1976, as much as 35,000 pounds of technical Mirex can be formulated into 10:5 bait. This will allow for treatment of a much larger total acreage than has been treated in past years, but of course less actual Mirex will be applied per acre, and less total Mirex will be applied. Moreover, aerial application during 1977 will be allowed only from single engine aircraft and helicopters

[9] An additional 1,000 pounds of Mirex bait could be used for research purposes as a control to determine the efficacy of alternative materials until June 30, 1978.

[10] Under the Plan the Mississippi Authority requests that its Mirex 10:5 bait registration be amended to permit packaging into five pound bags for ground broadcast and mound, but not aerial, application. I am instructing the Office of Pesticide Programs to take the steps necessary to implement the Plan, including granting this request.

flying at an altitude of no greater than 150 feet and at a speed of no greater than 150 miles per hour. This restriction should ensure that application is much more accurate than it has been in the past.

3. *Mirex Harvester Ant Bait 300 for Use in Hawaii.* The Plan calls for immediate cancellation of Mirex Harvester Ant Bait 300 for all uses other than for the control of ants on pineapples in Hawaii. The effective date of cancellation for that use is December 1, 1977. Stocks existing as of that date may be applied aerially until December 31, 1977, and they may be distributed, sold, and used for ground application until they run out.

4. *Other Mirex Registrations.* The effective date for cancellation for the Mississippi Authority's registrations for technical Mirex is December 1, 1977.[11] This will allow for use of technical Mirex for only so long as is necessary to comply with the production limitations and end dates for the formulated products. All other Mirex registrations are cancelled immediately under the Plan. Presently existing stocks of materials formulated under these registrations may be distributed, sold, and used until December 31, 1977.

B. OTHER RESTRICTIONS ON MIREX APPLICATION.

1. *Number of Aerial Applications.* Other than the poundage limitations, the most important provision of the Plan is that it provides that no single acre of land may be treated aerially with Mirex bait of any kind between July 1, 1976 and December 31, 1977. Thus, any given land owner will receive at most only one more aerial application of Mirex bait.

2. *Request for Non-Treatment.* The Plan provides for notifying residents prior to aerial Mirex application to provide every resident an opportunity to prevent aerial Mirex application upon his land.

3. *Coastal Zone Restrictions.* The Plan calls for lifting certain presently-existing restrictions against applying Mirex in coastal counties. Rather than relying on political boundaries for determining how close to marine areas Mirex will be applied, as has been done in the past, the Plan relies on hydrological and geographical factors. Under the Plan, Mirex may not be applied in the "coastal zone," which consists of areas within twelve miles of coastlines, estuarine areas, and saline marshes, and areas around major rivers which are subject to tidal influence. Mirex may only be applied in coastal counties of a state if the state develops a plan of its own in accordance with the general criteria set forth in the Plan which is acceptable to EPA.

4. *Other Area limitations Applicable to Aerial Applications.* Under the Plan, Mirex may not be applied to "wooded areas" as defined in the Plan. Neither may Mirex be applied to aquatic areas as defined in the Plan, except for intermittent streams where there is no flow, and during the Fall of 1976 (when multi-engine aircraft will be allowed) except for man-made or natural impoundments which do not exceed two acres in size and which are not commercially fished. The intent of this provision is to keep Mirex out of areas which might result in exposure of aquatic organisms and areas in which exposure to human water supplies might result. The Plan will not allow Mirex application to idle lands that when left untreated will not increase infestation exposure to treated lands. Other areas will be aerially treated only if an appropriate state official certifies in writing before each application that he or his employees have inspected the area and found that there is at least one imported fire ant mound for each one-quarter section to be treated. This last restriction is included to ensure that no land is treated that is not infested with fire ants.

C. ADDITIONAL PROVISIONS

The Plan imposes several obligations upon the Agency.

1. *Suspension of the Pending Mirex Hearing.* Pursuant to the Plan, I am immediately terminating the pending hearing under section 6(b)(2) of FIFRA.

2. *Substitution of Less Toxic Formulation for Mirex 10:5 Bait.* When presented with adequate efficacy data, EPA will, under the Plan, be obligated to permit substitution of Mirex bait formulations providing for application of less actual toxicants per acre than Mirex 10:5 bait. The production limitations, end dates and other restrictions otherwise provided for will still remain in effect for the substituted formulation. Since the poundage limitations will not change, this provision will allow more acres to be treated with the reduced toxicant formulation.

3. *Research.* EPA will continue to carry out its obligations set forth in the "Cooperative Interagency Agreement for the Study of Alternative Chemicals to Mirex," as amended. (See Attachment B to the Plan).

V. STATEMENT OF REASONS FOR ACCEPTING THE MISSISSIPPI AUTHORITY PLAN

The Agency has decided to accept the Plan submitted by the Mississippi Authority. Because the Mississippi Authority is the sole registrant of end-use Mirex products, and the Plan proposed by it provides for the final cancellation of all of its Mirex registrations,[12] the primary consideration affecting the decision to accept or reject the Plan is whether the phase-out period specified in the Plan for certain Mirex registrations is consistent with applicable statutory standards and the public interest in general. In the event that the Agency had determined that this or any other aspect of the Plan as unacceptable, its only option would have been to continue the FIFRA section 6(b)(2) hearing, with the objective of implementing some other solution through the hearing process.

The Agency has decided that the phase-out period provided for in the Plan is in the public interest, for essentially the following reasons:

A. FALL 1976 APPLICATIONS

The Plan calls for allowing a slightly expanded program for applying Mirex 4X bait in the Fall of 1976. The present Mirex hearings would probably not be completed before November. The Administrative Law Judge and the Administrator would then have a combined total of ninety days to render a decision whether or not to cancel. A suspension hearing could consume an equivalent amount of time. The bulk of the Fall application program would be over by late November. Thus, it seems clear that the Fall 1976 application would proceed in any event.[13]

B. APPLICATIONS IN 1977 AND 1978

It would probably be possible to secure an order cancelling Mirex registrations prior to the Spring and Fall 1977 applications, although it is possible that such an order would be stayed pending appeal in a U.S. Court of Appeals. Given the dispute over some of the facts and over the weight to be given to the risks and benefits of Mirex use, as well as the possibility for procedural error inherent in formal adjudicatory proceedings, an appeal to the courts of such an order could result in Mirex use for a period of time longer than the Mississippi Authority's Plan calls for.

Moreover, pursuing the present hearings to their conclusion, including a possible appeal in a U.S. Court of Appeals, would consume large amounts of valuable Agency resources, both in the Office of General Counsel and in the Office of Pesticide Programs. The Office of Special Pesticide Reviews in the Office of Pesticide Programs is intensively engaged in evaluating a large number of pesticides, all of which may pose risks to man and the environment equal to or greater the risks posed by Mirex. The Office of General Counsel is actively supporting this effort, which will undoubtedly give rise to litigation in the near future. The limited resources of both Offices are urgently needed for these efforts. Finally, in this regard, the acceptance of the Plan will permit senior agency officials, including the Administrator, and the Administrative Law Judge assigned to the hearing, to devote their limited time to other matters.

In return for the elimination of litigative risks and preservation of Agency resources, the Agency is essentially yielding one year of aerial or ground application of up to 35,000 pounds of technical Mirex subject to stringent environmental constraints, and one-half year of ground broadcast and mound application of any of the 35,000 pounds that remains after December 31, 1977.[14] The Plan calls for application only from single engine aircraft during 1977 and only to land that is demonstrably infested with fire ants. Aquatic and marine areas are protected. During the entire remaining time allowed for aerial Mirex application no single acre may be aerially treated on more than one occasion. With

[11] Hooker Chemical Company has one other registration for a technical Mirex product. That registration is unaffected by the Plan. However, since Mirex produced under this registration may only be used in the formulation of other products, the registration will be useless after December 1, 1977, unless the Agency issues fresh registrations for Mirex formulated products at some time in the future.

[12] Because of this aspect of the Plan, the question whether Mirex registrations should be cancelled is not presented for decision. In this regard, however, the Agency notes that there is a high likelihood that the FIFRA section 6(b)(2) hearings would have concluded with a final order cancelling Mirex registrations for use against the fire ant. Essentially, this judgment is based upon the evidence that Mirex poses a cancer risk to man, coupled with the available evidence pertaining to its persistence in the environment. All of this evidence is summarized in Part III. The fate of the pineapple use of Mirex should the hearing have continued is less clear; however, with respect to this use as well, cancellation was a likely result. Even if this use had not been cancelled, it is unlikely that the registrant would have continued to produce the small quantities involved, if the fire ant uses had in fact been cancelled.

[13] We have received information that Hooker Chemical Company, the sole producer of technical Mirex is presently refusing to sell Mirex to the Mississippi Authority unless the Authority provides for indemnification for losses in potential civil litigation. Of course, if Hooker refuses to sell any further technical Mirex, the whole question of the risks and benefits of further Mirex use becomes moot.

[14] The Plan also calls for slight reductions and additions to the coastal zone restrictions from the Administrator's May 3, 1972 order. Under the Plan, relief could be obtained from the present label restriction against application in coastal counties, pursuant to a coastal zone plan submitted to and approved by the Agency. Criteria are included to grow in the development of such coastal zone plans.

these restrictions an additional 35,000 pounds of Mirex should not add significantly to the already existing environmental burden of Mirex.

A further positive aspect of the Plan is the provision requiring that if Mirex is to be used for fire ant control after January 1, 1977, it must be the 10:5 formulation (instead of the 4X formulation, which has been extensively utilized in the past). On a per acre basis, Mirex 10:5 application results in the application of approximately 70% less actual toxicant per acre. More acres can be treated with the amount of 10:5 bait that can be produced within the production limitation provided for in 1977 than would be the case if 4X bait were produced. Nevertheless, the Agency is of the view that additional acreage coupled with reduced exposure per care is preferable to less acreage with increased exposure per acre, particularly where treatment in or near populated areas is concerned.

Moreover, allowing use of Mirex, subject to the restrictions set forth in the Plan, will provide relief to the people in the South from fire ants for a reasonable period of time during which an alternative can be made available. Indeed, the assurance of a large market for an alternative pesticide to control fire ants should significantly stimulate research. Similarly, the specified phase-out period for the Hawaiian pineapple use for fire ants should permit the pineapple industry to avail itself of the benefits of any research which is conducted to develop an alternative for fire ant control, and to conduct any pesticide product development program they themselves may deem appropriate. Finally in this regard, the Plan eliminates uncertainty concerning the ultimate fate of Mirex registrations. Obviously, as long as uncertainty continued, it had some discouraging effect on public or private institutions to conduct research to develop alternatives to Mirex for ant control. This uncertainty, and any related disincentive on research efforts, are eliminated by approving the Plan.

Finally, acceptance of the Plan does not preclude the Agency from taking emergency action (including an emergency order of suspension), should any additional information come to its attention indicating that any use of Mirex provided for in the plan has given use to an imminent hazard to human health.

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[FRL 662–T; OPP–66022]

PESTICIDE PROGRAMS

Cancellation of Registration of Pesticide Products Containing Mirex

Pursuant to section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) *et seq.*) the Environmental Protection Agency (EPA) has notified the Mississippi Authority for the Control of Fire Ants, PO Box 1609, Jackson MS 39205, of its intention to cancel, in accordance with the following conditions, the registrations of all these products containing the active ingredient Mirex:

Registered products—Mirex

Registrant	EPA registration No.	Product
Mississippi authority for control of fire ants	38962-1	Fire Ant Bait.
Do	38962-2	Fire Ant Bait "150".
Do	38962-3	Granular Bait 2x now 195.
Do	38962-4	Granular Bait 4x.
Do	38962-5	Harvester Bait 300.
Do	38962-6	Mirex Special Concentrate (25 percent).
Do	38962-7	Mirex Technical Concentrate (80 percent).
Do	38962-8	Mirex Pelleted Bait 450.
Do	38962-9	A-C Mirex Pelleted Bait 470.
Do	38962-10	Yellowjacket Stopper.

A. PRODUCTION LIMITATIONS AND END DATES FOR USE OF CURRENT-REGISTERED PRODUCTS

1. *Number of Aerial Applications.* No single acre will be treated aerially with Mirex bait on more than one occasion between July 1, 1976 and December 31, 1977.

2. *Mirex 4x Bait.* The effective date of cancellation for Mirex 4x Bait (EPA Reg. No. 218–565) shall be December 1, 1976. Between July 1, 1976 and December 1, 1976 not more than 45,000 pounds of technical Mirex shall be formulated into Mirex 4x Bait. Stocks of Mirex 4x Bait existing as of December 1, 1976, may be used only through December 31, 1976; *provided* that 1,000 pounds of Mirex 4x Bait may be utilized for research as a control in experiments to determine the efficacy of alternative materials until June 30, 1978.

3. *Mirex 10:5 Bait.* EPA shall amend the Mirex 10:5 Bait registration (EPA Reg. No. 38962–3) to add to that registration by permitting the packaging of Mirex 10:5 Bait in five pound bags for ground broadcast or mound-to-mound application by persons affected by the imported fire ant, or under the supervision of authorized state or federal personnel.

The effective date of cancellation for Mirex 10:5 Bait (EPA Reg. No. 38962–3) shall be December 1, 1977. Between September 1, 1976 and December 1, 1977, not more than 20,000 pounds of technical Mirex shall be formulated into Mirex 10:5 Bait. *Provided that,* if less Mirex 4x Bait is produced than can be produced with the 45,000 pounds of technical Mirex provided for in paragraph (A)(2) above, up to 15,000 pounds of the amount of technical Mirex not utilized from this 45,000 pound limitation shall be added to the 20,000 pound production limitation for Mirex 10:5 Bait. Stocks of Mirex 10:5 Bait existing as of December 1, 1977 may be applied aerially only through December 31, 1977. Stocks of Mirex 10:5 Bait in five pound bags existing as of December 1, 1977 may be sold, distributed, and used in ground broadcast and mound application until June 30, 1978. Other stocks of Mirex 10:5 Bait existing as of December 1, 1977 may be packaged by the Registrant into five pound bags for sale, distribution, and use in ground broadcast and mound application until June 30, 1978.

4. *Mirex Technical.* The effective date of cancellation for Technical Mirex (EPA Reg. No. 218–585) shall be December 1, 1977. No stocks of Technical Mirex existing as of December 1, 1977 shall be distributed, sold, or used.

5. *Mirex Harvester Ant Bait 300.* The cancellation of the registration for Mirex Harvester Ant Bait 300 (EPA Reg. No. 38962–5) shall be effective immediately for all uses other than for the control of the pheidole ant, the Argentine ant, and the fire ant on pineapples in Hawaii. Presently existing stocks of Mirex Harvester Ant Bait 300 may be distributed, sold, and used for all uses until December 31, 1976. The effective date of cancellation for Mirex Harvester Ant Bait 300 for the control of the said ants on pineapples in Hawaii shall be Decem-

ber 1, 1977. Stocks of Mirex Harvester Ant Bait 300 existing on December 1, 1977 may not be applied aerially for the control of the said ants on pineapples in Hawaii after December 31, 1977, but may be distributed, sold, and used (other than aerially) for this use indefinitely.

6. *Other Mirex Registrations.* The cancellation of all other Mirex registrations shall be effective immediately. Presently existing stocks of materials formulated according to all other EPA Mirex registrations may be distributed, sold, and used until December 31, 1977.

B. ADDITIONAL RESTRICTIONS

1. *Coastal Zones.* Because of the recognized limitations of the coastal county restrictions which were based on political boundaries, and in view of the need to protect embryonic and juvenile marine and aquatic life which is dependent on shallow coastal and estuarine areas, aerial treatment will be precluded within the coastal zone as determined as follows:

The coastal zone shall be determined so as to bring within the zone all of the following areas:

(a) The area between the coastline and a parallel line twelve miles from the coastline; the coastline shall include the shores of any bays or estuaries which are contiguous to the sea;

(b) The area within twelve miles from the furthest inland edge of any coastal, saline marsh; coastal marshes are defined as those areas represented on U.S. Geological Survey maps by the standard marsh symbol with a white background;

(c) The area around major rivers which are subject to a tidal influence which area may be, based on hydrologic and geologic factors, from one-quarter mile to five miles in circumference as measured from the point of tidal influence; a major river is defined as any river which drains an area in excess of 150 square miles. The point of tidal influence is defined as the point at which the mean discharge of the river no longer affects its stage at a mean high tide.

Whenever practicable coastal zone boundaries shall be along topographical features which are easily recognizable by air, such as highways, railroad beds, and rivers.

States that desire relief from the current label restriction against aerial Mirex application in coastal counties may develop a plan in accordance with the criteria contained herein and additional guidelines as found necessary, and may submit the plan to the Office of Pesticide Programs for review and approval. Such plan must be submitted to EPA for approval at least 45 days prior to application. The Office of Pesticide Programs may, by approving the plan in whole or in part, grant relief from the label prohibition against aerial Mirex application in any coastal county to the extent that such aerial application is performed consistently with the plan and any conditions imposed by EPA Office of Pesticide Programs in conjunction with approving the plan. The current coastal county restrictions shall remain in effect for each county for which an acceptable coastal zone plan is not submitted.

2. *Type of Aerial Application.* From July 1, 1976 through December 31, 1976, aerial application shall be made in accordance with current label restrictions except where the restrictions set forth in paragraphs 3 and 4 of these additional restrictions supersede. From January 1, 1977 through December 31, 1977, aerial application shall be made only with helicopters and single-engine aircraft flying at an altitude of no greater than 150 feet and at a speed of no greater than 150 miles per hour; *provided* that these conditions shall in no way supersede regulations of other agencies, including the Federal Aviation Administration, governing the aerial application of pesticides.

3. *Requests for Non-Treatment.* Prior to any aerial application of Mirex, prominent notice shall be published in local newspapers, at least 20 days but not more than 30 days prior to application, stating what areas will be treated and giving any resident of such areas the right to prevent application upon his land. *Provided* that until December 1, 1976 the required notice may be published at least 10 days, but not more than 30 days prior to application.

4. *Area Limitations Applicable to Aerial Applications.* a. *Wooded Areas.* Wooded areas are defined as those areas which have trees and which are not used for agricultural purposes. Tree farms or commercial forests shall not be considered areas used for agricultural purposes; however, groves and orchards shall be considered used for agricultural purposes. There shall be no aerial application is contiguous wooded areas except for a 100 yard swath contiguous to treated areas and cleared areas within the wooded area.

b. *Aquatic Areas.* From July 1, 1976 through December 31, 1976 there shall be no aerial application to any aquatic areas, except for intermittent streams where there is no flow and except for manmade or natural impoundments of water which do not exceed two acres in size and are not commercially fished. However, even these exempted waters should be avoided where possible. After December 31, 1976, there shall be no aerial application of Mirex to any aquatic areas, except for intermittent streams where there is no flow. Intermittent streams are defined as those streams having continuous flow during periods of heavy run-off and no flow during the remainder of the year. Manmade or natural impoundments of water are defined as such impoundments of water occurring on farms that are utilized for purposes such as irrigation, stock watering, and recreation. Aquatic areas are defined to include without limitation estuaries, rivers, streams, wetlands, lakes, ponds, and other bodies of water. The term "wetlands" means those land and water areas subject to inundation by tidal, riverine, or lacustrine flowage. Generally included are inland navigable waters, including inland and coastal shallows, marshes, mudflats, estuaries, swamps, and similar areas in coastal and inland navigable waters. There shall be no aerial application where run-off or flooding will contaminate aquatic areas.

c. *Idle Lands.* Cut-over lands and brush fields that, when left untreated, will not increase infestation exposure to treated lands shall not be treated.

d. *Other Areas.* Aerial application is permitted (subject to paragraph 3 above) in areas other than those outlined above (even though some trees are present), such as agricultural lands, home sites, and developed portions of public areas; *provided* that an appropriate state official certifies in writing before each application that he or his employees have inspected the area and there is at least one imported fire ant mound for each one-quarter section to be treated. Certification shall be available for inspection upon EPA request.

5. *Ground Application.* Ground application, whether broadcast by properly calibrated equipment or individually mound treated, is permitted in all areas of infestation; *provided* that there shall be no ground application to aquatic and heavily forested areas or areas where run-off or flooding will contaminate such areas. Ground broadcast and mound treatment shall be confined to areas where the imported fire ants are causing significant problems.

6. *Revised labeling.* Revised labeling in accordance with this notice shall be prepared and submitted by the Mississippi Authority for the Control of Fire Ants for determination by EPA that such labeling conforms to this notice and other provisions of the Act.

7. *Monitoring.* It is understood that a program for human, environmental, and application monitoring of the application of Mirex bait is essential to this agreement. The users will have primary responsibility for application monitoring, subject to EPA oversight.

C. SUBSTITUTION OF LESS TOXIC MIREX FORMULATIONS FOR MIREX 10:5 BAIT

When presented with adequate efficacy data, EPA shall promptly permit substitution of Mirex bait formulations providing for the application of less actual toxicant per acre for Mirex 10:5 Bait (EPA Reg. No. 38962-3). The production limitations, end dates, and other restrictions provided for in this notice shall remain in effect for such substituted formulation.

The Agency has discussed this cancellation action with repersentatives of the Mississippi Authority for the Control of Fire Ants who have indicated concurrence with the intended cancellation. Moreover, the Mississippi Authority for the Control of Fire Ants has waived its right to request, within 30 days, that the registrations be continued in effect, and has further stated that it will not give its concurrence to any other person to request that the registrations be continued in effect. Accordingly, these registrations are hereby cancelled, effective on the effective dates specified herein.

Dated: December 21, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.76-38103 Filed 12-28-76;8:45 am]

[FRL 662-8; PF57]

PESTICIDE PROGRAMS

Notice of Filing of Pesticide Petition

Buchman Laboratories, Inc., 1256 N. McLean Blvd., Memphis TN 38108 has submitted a petition (PP 7F1885) to the Environmental Protection Agency which proposes that 40 CFR 180.288 be amended by establishing a tolerance of 0.1 part per million for residues of the fungicide 2-(thiocyanomethylthio) benzimidazole (TCNTB) in or on the raw agricultural commodity sugarcane. The proposed analytical method for determining residues is a colorimetric procedure in which residues are extracted, cleaned up, and hydrolyzed. The thiocyanate ion liberated is determined spectrophotometrically at 630 nanometers. Notice of this submission is given pursuant to the provisions of Section 408(d) (1) of the Federal Food, Drug, and Cosmetic Act. Interested persons are invited to submit written comments on this petition to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M St. SW, Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning this petition may be directed to Product Manager (PM) 22, Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at 202/426-2454. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: December 20, 1976.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

[FR Doc.76-38102 Filed 12-28-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21019; File No. TS 10-76; FCC 76-1147]

PEOPLES TELEPHONE COOPERATIVE, INC., ET AL.

Toll Connection Arrangement

Adopted: December 15, 1976.

Released: December 28, 1976.

1. We have before us for consideration (1) a formal complaint filed pursuant to Sections 201(a), 206, 207, 208, 209 and 214(a) of the Communications Act of 1934, as amended, by Peoples Telephone Cooperative, Inc. (Peoples) against Southwestern Bell Telephone Company (Southwestern) and General Telephone Company of the Southwest (General); (2) Southwestern and General's answers and requests that the complaint be dismissed; and (3) Peoples' oppositions to the requests for dismissal of its complaint.

2. Peoples is a non-profit corporation providing telephone service and equipment to subscribers in Wood County, Texas. In 1973, Peoples constructed a toll line from several of its exchanges to Southwestern's repeater point D5E in Wood County.[1] Southwestern refused to interconnect its toll terminal facilities with Peoples' newly constructed toll line and abandon the present toll routing arrangement. The present arrangement requires that Peoples' intrastate and interstate traffic be transferred from its facilities to the lines of General and then to those of Southwestern. Peoples' proposed rerouting arrangement would bypass General's facilities and allow direct interchange of traffic between Peoples and Southwestern. Peoples brought an action in United States District Court, Eastern District of Texas, against Southwestern alleging violation of the antitrust laws and seeking equitable relief and damages. The Court denied Southwestern's motion to dismiss and, applying the doctrine of primary jurisdiction, stayed all proceedings before it pending conclusion of appropriate administrative proceedings before this Commission. "Peoples Telephone Cooperative, Inc. v. Southwestern Bell Telephone Company," 399 F. Supp. 561 (E.D. Tex. (1975)). The parties were thereafter unsuccessful in further attempting to settle the dispute and the instant complaint was filed.

3. All parties agree that the basic issue to be determined is whether it is in the public interest to change the existing toll connection arrangement to permit Peoples to connect its new toll line directly to Southwestern's toll terminal. Peoples alleges that such a change would be necessary and desirable in the public interest because it would be more rapid and efficient for all telephone users if the intermediary connection through General were eliminated. Peoples asserts that this would permit direct dial toll service not now available; allow use of entirely underground facilities as opposed to the mainly aerial facilities of General; and eliminate a third party between Peoples' and Southwestern's toll centers. Finally, Peoples alleges that Southwestern's refusal to connect with its new toll line is based in substantial part on a desire to accommodate General in order that General may continue to share in the revenues generated by Peoples' subscribers on messages transmitted through Southwestern's toll center. Accordingly, Peoples asks us to (1) order Southwestern to establish a physical connection with Peoples' toll line at its toll terminal near Quitman, Texas at repeater point D5E; (2) order General to cease and desist from any efforts to prevent Southwestern from making such a connection; (3) grant such certificates pursuant to Section 214(a) of the Act as may be required for the discontinuance of the existing toll connection; and (4) award damages to Peoples as may be established as resulting from Southwestern and General's violations of the Act.[2]

4. Southwestern and General argue that the change from the existing toll connection arrangement requested by Peoples is not in the public interest. Southwestern asserts that a change in point of connection should be made only in the most compelling circumstances and both parties contend that the proposed change would result in duplicating facilities and idling useful plant.[3] They deny Peoples' allegation of collusion for the purpose of continuing General's participation in sharing toll revenues. In addition, they challenge the legal sufficiency of the complaint under Section 208 of the Act asserting that it fails to allege a violation by either defendant of any provision of the Act or of any Commission order, rule or regulation, and therefore ask that the complaint be dismissed. Furthermore, Southwestern contends that Peoples' offer to specify damages by supplemental complaint does not comply with our rules. Finally, both defendants deny that the Commission has jurisdiction under Section 214(a) of the Act with regard to this matter since no application by an appropriate party for relief thereunder has been filed.

DISCUSSION

5. Consideration of whether the complaint states a cause of action under the Communications Act requires us to accept the material allegations therein as true. "Conely v. Gibson," 335 U.S. 41 (1957). We believe that the complaint substantially complies with our procedural rules governing complaints and we will deny defendants' motions to dismiss. Section 1.731(a) of our rules provides for dismissal of a complaint when there is a "lack of legal sufficiency appearing on the complaint." Section 1.722 of our rules provides:

> A formal complaint shall be so drawn as to advise the Commission and the defendant fully wherein the provisions of the Communications Act, or an order, rule, or regulation of the Commission have been violated; as to the facts claimed to constitute such violation, including such data as will identify, with reasonable certainty, the communications, transmissions, or other services complained of (as well as any other appropriate facts elicited by § 1.723); and as to the relief sought.

In addition, § 1.735(a), provides, in part:

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[1] Peoples states that it constructed the toll line upon the advice of an independent consulting engineer and that of the Rural Electrification Administration field staff who believed that toll service could be improved through this facility.

[2] Peoples states that it intends to specify its damages with certainty by supplemental complaint pursuant to § 1.723 of the Commission's Rules.

[3] Southwestern expresses the fear that approval of Peoples' action would set a dangerous precedent with the likely effect of encouraging other companies to request a change in point of connection to one most financially beneficial to it.

Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act will be dismissed.

Taken as a whole, the allegations in the complaint raise questions, which we do not now decide, as to whether there have been violations of Sections 201 and 202 (a) of the Act.[4] The complaint specifically invokes Section 201(a) and alleges specific facts showing Southwestern's refusal to interconnect pursuant to that provision on terms and conditions Peoples believes to be reasonable. Furthermore, the complaint alleges, upon information and belief, the existence of an accommodating relationship between Southwestern and General which could constitute an undue or unreasonable preference or advantage for General and prejudice or disadvantage against Peoples in violation of Section 202(a). This allegation substantially complies with § 1.726 of our rules requiring that when undue or unreasonable preference, advantage, prejudice, or disadvantage is alleged, "* * * the complaint shall clearly specify the particular person, company or other entity, locality, or description of traffic affected thereby, and the particular discrimination, preference, advantage, prejudice, or disadvantage relied upon as constituting a violation of the Communications Act." Thus, it is sufficient that denial of interconnection to Peoples by Southwestern based on its desire to allow General to continue to receive a share of the toll revenues could violate Section 202(a). We do not believe that Peoples is required to plead extensive factual evidence not readily available to it in support of this allegation. Such evidence may be brought forth by later means of discovery or cross-examination in the evidentiary hearing we will now designate. We follow the policy expressed in Conely that "* * * complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim that would entitle him to relief." See "Conely v. Gibson," 335 U.S. at 45. We have previously stated that our rules governing complaints are to be liberally construed. The Bunker-Ramo Corp. et al., 25 FCC 2d 691, 696 (1970); "Strouth v. Western Union," 59 FCC 2d 852 (1976). The defendants have been given adequate notice of the nature of the claims against them and have been advised with reasonable certainty of the facts upon which the claims are based. We find therefore that the complaint does not lack sufficiency.

6. We also cannot agree with Southwestern that Peoples may not specify damages by supplemental complaint. Section 1.723(b) of our rules specifically states that ["D]amages may be awarded * * * upon a supplemental complaint based upon the finding of the Commission in the original proceeding." Furthermore, defendants' argument that the Commission lacks jurisdiction over this under Section 214(a) of the Act because no carrier has made an application thereunder is misplaced. Section 214(a) provides that ["N]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby". It is clear that Section 4(i) of the Act allows us to either order the filing of any appropriate application under Section 214(a), or issue after opportunity for hearing, without such a filing, any appropriate certificate should we find that the public interest requires Southwestern to interconnect directly with Peoples.[5]

7. Section 201(a) gives us authority to require the establishment of physical connection of the facilities of common carriers subject to our jurisdiction. Southwestern provides interstate telephone service and is subject to Section 214 of the Act. Peoples is a connecting carrier and subject to Sections 201 through 205 of the Act, among others, as provided in Section 2(b) of the Act.[6] The pleading filed by Peoples may be treated, for purposes of considering what relief, if any, is to be granted, as a petition for interconnection under Section 201(a) as well as a complaint under Section 208 of the Act. See Tri-City Telephone Company, 20 FCC 2d 674, 675 (1969).

8. Southwestern incorrectly states that "a change in point of connection should be made only in the most compelling circumstances." The standard by which the Commission may order physical connection of facilities of different carriers requires a determination, after opportunity for a hearing, that such connection is "necessary or desirable in the public interest." In the circumstances here we believe that an adjudicatory hearing is necessary to establish definite facts upon which to base the public interest determination. We will therefore designate this matter for evidentiary hearing. In doing so, we emphasize that connection will not be ordered merely to serve the private interests of any carrier. Conversely, should it be determined that the public interest would be served by the connection Peoples seeks, such connection will not be frustrated merely to serve the private interests of any carrier. The public interest standard must be related to the objectives set forth in the Communications Act including the provision of a rapid, efficient, nationwide wire communciation service.

9. In light of the foregoing, it is ordered, pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 208 and 409 of the Communications Act of 1934, as amended, That this matter is hereby designated for hearing on the following issues:

(1) to determine whether telephone service to Peoples' subscribers would become more rapid and efficient or less costly if the intermediary connection through General were eliminated;

(2) to determine whether direct dial toll service is now available to Peoples' subscribers, and, if not, whether connection of Peoples' toll line with Southwestern will make such service available;

(3) to determine whether connection of Peoples' toll line with Southwestern will result in duplicating facilities and idling useful plant;

(4) to determine whether connection of Peoples' toll line with Southwestern will result in any adverse effect on the quality of, or charges for, any of General's telephone service.

(5) to determine the facts and circumstances surrounding Southwestern's refusal to establish physical connections with Peoples' toll line;

(6) to determine whether General has engaged in efforts to encourage or persuade Southwestern not to establish physical connections with Peoples' toll line, and, if so, the nature and extent of those efforts;

(7) to determine whether Southwestern has engaged in any unjust or unreasonable practice in violation of Section 201(b) of the Act by refusing to establish physical connections with Peoples' toll line;

(8) to determine whether Southwestern has given any undue or unreasonable preference or advantage to General in violation of Section 202(a) of the Act by refusing to establish physical connections with Peoples' toll line;

(9) to determine whether Southwestern has subjected Peoples to any undue or unreasonable prejudice or disadvantage in violation of Section 202(a) of the Act by refusing to establish physical connections with Peoples' toll line;

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[4] Section 201(a) provides: "It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable requests therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes."

Section 202(a) provides: "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

[5] Section 4(i) provides: "The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."

[6] Section 2(b) provides, in part: "Subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to * * * (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier * * * except that sections 201 through 205 of the Act, both inclusive, shall except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4)." (Emphasis added.)

(10) to determine whether Southwestern has engaged in any unjust or unreasonable discriminatory practice or has subjected Peoples' subscribers to undue or unreasonable prejudice or disadvantage in violation of Section 202(a) of the Act by refusing to establish physical connections with Peoples' toll line;

(11) to determine whether General has subjected Peoples' subscribers to undue and unreasonable disadvantage in violation of Section 202(a) of the Act and made efforts to prevent Southwestern from establishing physical connections with Peoples' toll line;

(12) to determine whether Southwestern and General, acting in concert, have engaged in any unjust or unreasonable discriminatory practice or have subjected Peoples' subscribers to any undue or unreasonable prejudice or disadvantage in violation of Section 202(a) of the Act by continuing to insist on General's intermediary connection between Peoples' and Southwestern's toll centers after Peoples had requested connection of its toll line to Southwestern's toll center;

(13) to determine whether forfeitures should be imposed against Southwestern pursuant to Section 202(c) of the Act for any violation determined in issues (8) through (10) and (12) above;

(14) to determine whether forfeitures should be imposed against General pursuant to Section 202(c) of the Act for any violation determined in issues (11) and (12) above;

(15) to determine whether it is necessary or desirable in the public interest to order Southwestern to establish a physical connection with Peoples' toll line at the Southwestern toll terminal near Quitman, Texas at repeater point D5E and, if so, whether it is necessary or desirable in the public interest to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes;

(16) to determine whether our findings in issue (15) above require General to obtain a certificate for discontinuance of service pursuant to Section 214(a) of the Act, and, if so, whether such certificate should be granted to General.

10. *It is further ordered,* That the hearing in this proceeding shall be held before an Administrative Law Judge at a time and place to be specified by subsequent order; and that such Administrative Law Judge shall upon closing of the record, prepare and issue an initial decision, which shall be subject to the submittal of exceptions and requests for oral argument as provided in § 1.276 and 1.277 of the Commission's Rules (47 CFR 1.276 and 1.277), after which the Commission shall issue its decision as provided in § 1.282 of the Commission's Rules (47 CFR 1.282).[7]

11. *It is further ordered,* That Peoples Telephone Cooperative, Inc., Southwestern Bell Telephone Company, General Telephone Company of the Southwest, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

12. *It is further ordered,* That the initial burden of proceeding with regard to issues (1) and (2), and (6) through (15) shall be upon Peoples and with regard to issues (3) and (4) shall be upon Southwestern and General.

13. *It is further ordered,* That the burden of proceeding with regard to issue (5) shall be with Southwestern.

14. *It is further ordered,* That the parties herein may avail themselves of an opportunity to be heard by filing with the Commission pursuant to Section 1.221(c) of the Rules within twenty (20) days of the release date of this Memorandum Opinion and Order, a written notice stating an intention to appear on the date set for hearing and present evidence on the issues specified.

15. *It is further ordered,* That the motions to dismiss of General and Southwestern are denied.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-38181 Filed 12-28-76;8:45 am]

PERSONAL USE RADIO ADVISORY COMMITTEE

Meeting

Personal Use Radio Advisory Committee (PURAC) will meet at the following time and location.

Date: January 27, 1977
Time: 10 A.M.
Location: Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia 22204.

Agenda:

1. Chairman's remarks and introductions.
2. Reports on action items.
3. Reports by task area coordinators.
4. Other business, to be determined.
5. Review of action item list.
6. Adjournment.

Meetings of PURAC are open to the public, subject to available meeting space. Observers desiring to make oral presentations at this meeting should coordinate their presentations with the Chairman. The following information should be submitted: Name, mailing address, and telephone number of person making the presentation, outline of material to be presented, duration of presentation, and audio/visual aids required. Written statements may also be submitted to the Committee and should be addressed to the Chairman, Mr. John B. Johnston, Room 5114, Federal Communications Commission, Washington, D.C. 20554. Further information concerning this meeting of PURAC may be obtained from Mr. Gregory M. Jones, Room 5114, Federal Communications Commission, Washington, D.C. 20554 (202-632-7175).

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-38182 Filed 12-28-76;8:45 am]

PRIVATE LAND MOBILE ADVISORY COMMITTEE

Meeting

In preparation for the 1979 World A ministrative Radio Conference (WARC the Private Land Mobile Advisory Committee, headed by Neal Pike, will hold next meeting on January 27, 1977 Washington, D.C. The meeting will held in Conference Room 8210, Feder Communications Commission, 2025 Street, N.W., at 9:00 A.M. The meeti is open to the public and will be conduc ed in accordance with the followin agenda:

1. Call of the agenda.
2. Opening remarks of the Chairman.
3. Designation of Secretary.
4. Consideration of comments in Dock 20271, Third Notice of Inquiry.
5. Further business.
6. Adjournment.

FEDERAL COMMUNICATIONS COMMISSION.
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-38183 Filed 12-28-76;8:45 am

FEDERAL MARITIME COMMISSIOI

PRIVACY ACT OF 1974

System of Records

Notice is hereby given that the Federa Maritime Commission pursuant to U.S.C.A. 552a(e) (4) and (11) of the Pri vacy Act of 1974 (Pub. L. 93-579), pro poses to adopt the following additions notice of system of records.

Interested parties may participate i this proceeding by filing with the Secre tary, Federal Maritime Commission, 110 L Street, NW., Washington, D.C. 2057 on or before January 28 1977 an origina and 15 copies of their views and com ments pertaining to the routine use por tion of the notice. All suggestions fo changes in the text should be accom panied by drafts of the language though necessary to accomplish the desire changes and should be accompanied b supportive statements and arguments. I no comments are received within 30 day from the date of publication (January 28, 1977) in the FEDERAL REGISTER, th additional system of records will become effective, as proposed, by the Commission.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

FMC-21

System name:

Payroll Records—Federal Maritime Commission.

System location:

General Services Administration, Region 3 Office; copies held by the FMC. (GSA holds records for the Federal Maritime Commission under contract.)

Categories of records in the system:

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees;

[7] In accordance with Section 410(b) of the Act and the "Plan of Cooperative Procedure" set forth in Appendix A, Part I of the Commission's Rules and Regulations, we are directing the Chief, Common Carrier Bureau to notify the general solicitor of the National Association of Regulatory Utility Commissioners that the Texas Public Utility Commission is invited to designate a member of its commission to sit with the Administrative Law Judge as a cooperating Commissioner. See In the Matter of Doniphan Telephone Co. v. AT&T and Southwestern Bell, 34 FCC 2d 949 (1963).

health benefits records, requests for deductions; tax forms, W–2 forms, overtime requests; leave data; retirement records. Records are used by the FMC and GSA employees to maintain adequate payroll information for FMC employees, and otherwise by the FMC and GSA employees who have a need for the record in the performance of their duties.

Authority for maintenance of the system:

31 U.S.C., generally.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Privacy Act Officer, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Privacy Act Officer.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act, Public Law 93–579.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper and microfilm.

Retrievability:

Social Security Number.

Safeguards:

Stored in guarded building; released only to authorized personnel.

Retention and disposal:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2)

System manager(s) and address:

Director, Office of Budget and Finance, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

Notification procedure:

All inquiries regarding this system of records should be addressed to: Privacy Act Officer, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

Record access procedures:

Requests for access to a record should be directed to the Privacy Act Officer listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

Contesting record procedures:

An individual desiring to amend a record pertaining to him shall direct such a request to the Privacy Act Officer at the above listed address. Such request shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of Title 46 of the Code of Federal Regulations.

Record source categories:

The subject individual; the Commission.

APPENDIX—FEDERAL MARITIME COMMISSION

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a "routine use," to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit.

A record from this system of records may be disclosed as a "routine use" to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc.76–38076 Filed 12–28–76;8:45 am]

[Independent Ocean Freight Forwarder License No. 1706]

EL COQUI SHIPPING CO.

Order of Revocation

By letter dated November 19, 1976, Mr. Anthony La Penta, dba, El Coqui Shipping Company, 371 Classon Avenue, Brooklyn, NY 11238 was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1706 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before December 19, 1976.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

El Coqui Shipping Company has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) Section 5.01 (c) dated June 30, 1975:

It is ordered, That Independent Ocean Freight Forwarder License No. 1706 issued to El Coqui Shipping Company be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No.

1706 be and is hereby revoked effective December 19, 1976.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon El Coqui Shipping Company.

LEROY F. FULLER,
Director,
Bureau of Certification & Licensing.

[FR Doc.76-38204 Filed 12-28-76;8:45 am]

[Independent Ocean Freight Forwarder License No. 1711]

FREDERICK MICHAEL BROTHERS

Order of Revocation

By letter dated November 19, 1976, Mr. Frederick Michael Brothers, 67-81 152nd Street, Flushing, N.Y. 11367 was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1711 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before December 19, 1976.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Frederick Michael Brothers has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) Section 5.01 (c) dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 1711 issued to Frederick Michael Brothers be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1711 be and is hereby revoked effective December 19, 1976.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Frederick Michael Brothers.

LEROY F. FULLER,
Director,
Bureau of Certification & Licensing.

[FR Doc.76-38205 Filed 12-28-76;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. G-2895, etc.]

ATLANTIC RICHFIELD CO., ET AL.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

DECEMBER 16, 1976.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 13, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-2895 ..... D 7-6-76	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Natural Gas Pipeline Company of America, Lips Field, Roberts and Ochiltree Counties, Tex.	(2)	(2)
G-4070 ..... C 7-8-76	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	Arkansas Louisiana Gas Co., East Haynesville and Colquitt Fields, Claiborne Parish, La.	[3] [4] 67.9068¢	15.025
G-4579 ..... D 3-5-76	Cities Service Oil Co. (operator), et al., P.O. Box 300, Tulsa, Okla. 74102.	Colorado Interstate Gas Co., Keyes Field, Cimarron County, Okla.	(5)	(5)
G-7004 ..... D 11-30-76	Pennzoil Co., 900 Southwest Tower, Houston, Tex. 77002.	Consolidated Gas Supply Corp., certain acreage in West Virginia.	(5)	(5)
G-16492, *et seq.*[6] D 7-26-76	Caroline Hunt Schoellkopf, 2900 First National Bank Bldg., Dallas, Tex. 75202.	United Gas Pipe Line Co., et al. Northwest Oberlin Field, Allen Parish, La., et al.	(7)	.....
G-19284 ..... D 6-8-76	General American Oil Co. of Texas, Meadows Bldg., Dallas, Tex. 75206.	United Gas Pipe Line Co., 1,237.557 acres of lease No. L-4636, 3,631.37 acres of General American's lease No. L-4637, 2,403.89 acres of lease No. L-4633.	(5)	(5)
CI70-573 [8] 4-8-76	The Rodman Corp. (operator), et al., P.O. Box 3820, Odessa, Tex. 79760.	Cities Service Gas Co., Sooner Trend Field, Kingfisher County, Okla.	.....	.....
CI72-81 ..... C 12-3-76	Arkla Exploration Co., P.O. Box 1734, Shreveport, La. 71151.	Arkansas Louisiana Gas Co., section 9-16N-26W, Dewey County, Okla.	(9)	.....
CI74-145 ..... C 6-15-76	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	El Paso Natural Gas Co., Drinkard Formation Gas-Well Gas, Lea County, N. Mex.	[4] [10] [11] 64.6624¢	14.65
CI75-245 ..... E 12-9-76	Sun Oil Co., 2 Northpark East, P.O. Box 20, Dallas, Tex. 75221.	Arkansas Louisiana Gas Co., Lacy and River areas, Blaine and Kingfisher Counties, Okla.	(12)	.....
CI75-336 ..... C 11-30-76	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79105.	Colorado Interstate Gas Co., Patrick Draw Area Field, Sweetwater County, Wyo.	[4] [11] [13] 63.00¢	14.65
CI75-771 ..... C 6-15-76	Amoco Production Co.	Transwestern Pipeline Co., Peterson Penn Field, Roosevelt County, N. Mex.	[4] [13] 63.1800¢	14.65
CI76-452 ..... C 9-3-76	Odessa Natural Corp. (operator), P.O. Box 3488, Odessa, Tex. 79760.	El Paso Natural Gas Co., township 23 north, range 3 west, all of section 21, S/2 of section 22, all of section 27 and all of section 28, all in Sandoval County, N. Mex.	[4] [13] $1.43	14.73
CI77-74 ..... B 10-20-76	Sun Oil Co.	Union Texas Petroleum, a division of Allied Chemical Corp., various fields, Noland and Coke Counties, Tex.	(14)	.....
CI77-112 ..... (CI64-902, CS72-852, CS75-396) D 10-20-76	Delta Drilling Co., for itself and as operator; Suburban Propane Gas Corp., 2210 Mercantile Bank Bldg., Dallas, Tex. 75201.	Northern Natural Gas Co., Crockett County, Tex.	(15)	(15)
CI77-123 ..... A 11-20-76	Texas Pacific Oil Co., Inc., 1700 One Main Pl., Dallas, Tex. 75250.	El Paso Natural Gas Co., Elliott "B" 12 No. 2 Well, Will Cary No. 8 Well, Lea County, N. Mex.	[4] [13] [14] $0.5772	14.73
CI77-127 ..... A 11-26-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., Bayou Jean LaCroix Field, Terrebonne Parish, La.	[4] [13] [14] [16] $1.79	15.025

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI77-128 A 11-26-76	Enserch Exploration, Inc., 1817 Wood St., Dallas, Tex. 75201.	Transwestern Pipeline Co., D. F. Crane "50" Unit No. 1 Well, section 50, block 42, H. & T. C. RR. Co. Survey, Hemphill County, Tex.	[4] [11] [14] [19] $1.5375	14.65
CI77-130 (CI65-925) B 11-19-76	CRA International, Ltd., P.O. Box 1348, Kansas City, Mo. 64141.	Panhandle Eastern Pipe Line Co., Colclazier Gas Unit, Johansen Area, Kiowa County, Kans.	[31]	-------
CI77-132 A 10-30-76	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	United Gas Pipe Line Co., Shongaloo Area, Webster Parish, La.	[14] [15] [22] [23] $1.5236	15.025
CI77-133 A 12-2-76	CIG Exploration, Inc., Five Greenway Plaza East, Houston, Tex. 77046.[24]	Colorado Interstate Gas Co., Lott Area, Wheeler County, Tex.	[4] [14] [15] [19] $1.5375	14.65
CI77-134 A 12-3-76	Texas Pacific Oil Co., Inc., 1700 One Main Pl., Dallas, Tex. 75250.	Kansas-Nebraska Natural Gas Co., Reydon Area, Roger Mills, Okla. and Hemphill Counties, Tex.	[25] $0.93 [11] [14] [26] $1.43	14.73
CI77-135 A 12-3-76	Pacific Lighting Gas Development Co., 720 West Eighth St., Los Angeles, Calif. 90017.[24]	Pacific Interstate Transmission Co., Potash Field, Eddy County, N. Mex.; St. Clair Field, Roberts County, Tex; Apollo Field, Winkler County, Tex.	[27] 154.5427¢ [4] [14] [15] [23] 154.5916¢	14.65
CI77-136 A 12-3-76	Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151.	Arkansas Louisiana Gas Co., Hinton Area, Caddo County, Okla.	[4] [15] $1.53065	14.65
CI77-137 A 12-6-76	Placid Oil Co., 1600 First National Bank Bldg., Dallas, Tex. 75202.	Michigan Wisconsin Pipe Line Co., Eugene Island Area, block 296, offshore, Louisiana.	[11] [13] [20] [21] 143.0¢	15.025
CI77-138 A 12-7-76	Pan Eastern Exploration Co., P.O. Box 1642, Houston, Tex. 77001.[24]	Panhandle Eastern Pipe Line Co.,	[4] [13] [21] 166.1614¢	14.65
CI77-139 A 12-8-76	Amoco Production Co	Transcontinental Gas Pipeline Corp., West Mermentau Field, Jefferson Davis Parish, La.	[4] [14] $1.533739	15.025

[1] Nonproducing leases expired.
[2] Subject to upward Btu adjustment.
[3] Includes tax reimbursement.
[4] Applicant proposes to collect the national rate in accordance with Opinion No. 770 as amended.
[5] Nonproductive.
[6] G-17393, CI61-390, CI61-1343, CI61-1380, CI61-643, CI64-912, CI67-1190, CI68-1102, CI69-323, CI69-185, CI70-28, CI71-867, CI79-513.
[7] Applicant states that the certificate should be amended to show that the certificate holder is Carolina Hunt Schoellkoff and should delete the interest of Loyd B. Sands.
[8] Provides for a change in delivery point. Applicant proposes to cease deliveries to buyer at 1 delivery point and commence deliveries to buyer at another delivery point currently being used to receive gas sold to buyer under 2 other rate schedules.
[9] Applicant states that there is no gas being delivered yet from the additional property added by the July 1, 1976 amendment and the instant filing is merely to file the amendment as a supplement to Rate Schedule 29.
[10] Includes 51.7176¢ base price, plus 4.2187¢ production taxes, plus 8.7261¢ Btu adjustment.
[11] Subject to upward and downward Btu adjustment from 1,000 Btu/ft³.
[12] Filing reflects merger agreement between Sun Calvert Co. and Sun Oil Co., (Delaware).
[13] Plus 1.0¢/1,000 ft³ for gathering.
[14] Includes 100 pct. tax reimbursement.
[15] Subject to upward and downward Btu adjustment.
[16] To sell gas directly to same ultimate pipeline purchaser.
[17] Depleted.
[18] Includes 7.0¢ tax reimbursement.
[19] Plus 1.0¢ escalation per quarter.
[20] Applicant is willing to accept a certificate in accordance with Opinion No. 770, as amended.
[21] The lease reached its economic limit and CRA sold its interest therein effective Dec. 21, 1971.
[22] Plus 1.02¢ escalation per quarter.
[23] Applicant is willing to accept a 52.0¢ base rate, plus tax, Btu adjustment and gathering.
[24] Applicant and purchaser are affiliated.
[25] 1973-74 vintage gas.
[26] 1975-76 vintage gas.
[27] Price based on Nash Federal No. 3 well.
[28] Price based on O. R. Tipps No. 1 and University "21-2" No. 1 wells.
[29] At 14.73¢ psia.
[30] Includes 12.0228¢ Btu adjustment at estimated 1,078 Btu.
[31] Includes 0.9946¢ escalation per quarter.

[FR Doc.76-37856 Filed 12-28-76;8:45 am]

FEDERAL RESERVE SYSTEM

[H.2, 1976 No. 50]

ACTIONS OF THE BOARD

Applications and Reports Received During Week Ending December 11, 1976

ACTIONS OF THE BOARD

Regulation Z, Truth in Lending, the Board issued for comment a regulatory amendment that would permit creditors doing business in Puerto Rico to make truth in lending disclosures in Spanish (Docket No. R-0066).

Home Mortgage Disclosure Act exemptions, the Board approved, with certain exceptions, application from California, Illinois, Massachusetts, and New York for limited exemptions from the requirements of the Act and the Board's implementing Regulation C (Docket No. R-0057) California; (Docket No. R-0058) Illinois; (Docket No. R-0052) Massachusetts; and (Docket No. R-0047) New York.

The Board delegated to the General Counsel the authority to make certifications (prior and final) for Federal tax purposes with respect to distributions and divestitures pursuant to the Bank Holding Company Act amendments of 1970 (Docket No. R-0065).

Clear Bancorp, Inc., Chicago, Illinois, extension of time to January 12, 1977, within which to acquire 100 per cent of the voting shares (less directors' qualifying shares) of the Clearing Bank, Chicago, Illinois.[1]

First United Bancorporation, Inc., Fort Worth, Texas, extension of time to January 7, 1977, within which to consummate the acquisition of Las Colinas National Bank of Irving, Irving, Texas, a proposed new bank.[1]

Philadelphia National Corporation, Philadelphia, Pennsylvania, extension of time to January 31, 1977, within which to consummate the acquisition of Liberal Finance Company and Liberal Consumer Discount Company by Signal Finance Corporation.[1]

SYB Corporation, Oklahoma City, Oklahoma, extension of time to January 8, 1977, within which to consummate acquisition of Stock Yards Bank, Oklahoma City, Oklahoma.[1]

Northern Virginia Bank, Springfield, Virginia, to make an investment in bank premises.[1]

Bank of Marin, San Rafael, California, extension of time to March 8, 1977, within which to accomplish membership in Federal Reserve System.[1]

First Progressive Bank, Browton, Alabama, a proposed new bank, extension of time to September 27, 1977, within which it may open for business and effect Federal Reserve membership.[1]

Citibank Overseas Investment Corporation, New York, New York, extension of time within which its West German bank holding company, Citibank Aktiengesellschaft, may acquire and hold up to 65 per cent of the shares of Kunderkreditbank Kommanditgesellschaft Auf Aktien, Dusseldorf, West Germany, and hold up to 70 per cent of shares of Trinkaus & Burkhardt, Dusseldorf, West Germany.[1]

Deregistration for lenders pursuant to Regulation G for Cooperation Center Federal Credit Union, Berkeley, Dart Industries Federal Credit Union, Los Angeles, California; Eastern Idaho Production Credit Association, Pocatello, Idaho; Nalley's Federal Credit Union, Tacoma, Washington, and Northwest Livestock Production Credit Association, Portland, Oregon.[1]

Bank of Yakima, Yakima, Washington, proposed acquisition by Peoples National Bank of Washington, Seattle, Washington; report to the Comptroller of the Currency on competitive factors.[1]

First National Bank of Loysville, Loysville, Pennsylvania, proposed merger with Farmers Trust Company, Carlisle, Pennsylvania; report to the Federal Deposit Insurance Corporation on competitive factors.[1]

New Bank of Pleasant Grove, Pleasant Grove, Utah, proposed merger with Bank of Pleasant Grove, Pleasant Grove, Utah; report to the Federal Deposit Insurance Corporation on competitive factors.[1]

New Mountain View Bank, American Fork, Utah, proposed merger with Mountain View Bank, American Fork, Utah; report to the Federal Deposit Insurance Corporation on competitive factors.[1]

New State Bank of Lehi, Lehi, Utah; proposed merger with State Bank of Lehi, Lehi, Utah; report to the Federal Deposit Insurance Corporation on competitive factors.[1]

NOTE.—The H. 2 release is now published in the FEDERAL REGISTER. It will continue to be sent, upon request, to anyone desiring a copy.

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

United American Bank, Nashville, Tennessee. Branch to be established at 2600 West End Avenue, Nashville.[2]

The Rock Island Bank, Rock Island, Illinois. Branch to be established at 3411 18th Avenue, Rock Island.[2]

* * * * *

To Become a Member of the Federal Reserve System Pursuant to Section 9 of the Federal Reserve Act.

[1] Application processed on behalf of the Board of Governors under delegated authority.

APPROVED

Yamhill County Bank, McMinnville, Oregon.[2]

* * * * *

International Investments and Other Actions Pursuant to Section 25 and 25(a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Citibank Overseas Investment Corporation: To amend its Articles of ssociation by designating Wilmington, Delaware as its home office location.

Crocker International Bank: To amend Articles of Association by changing its name to Crocker International (New York).

Bamerical International Financial Corporation Investment—additional in Societe Financiere Europeenne Luxembourg, maintaining its current 12.5 per cent interest.

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

WITHDRAWN

Nabach, Inc., Farmer City, Illinois, for approval to acquire 52.27 per cent of the voting shares of State National Bank of Lincoln, Lincoln, Illinois.

APPROVED

AmeriCorp, Shawnee, Oklahoma, for approval to acquire 80 per cent or more of the voting shares of American National Bank and Trust Company of Shawnee, Shawnee, Oklahoma.[2]

* * * * *

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

REACTIVATED

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire 80 per cent or more of the voting shares of Security National Bank, Smyrna, Georgia.

APPROVED

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire 80 per cent or more of the voting shares of Security National Bank, Smyrna, Georgia.

United Michigan Corporation, Flint, Michigan, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of The Peoples State Bank of Caro, Michigan, Caro, Michigan.[2]

Michigan Financial Corporation, Marquette, Michigan, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of The Iron River National Bank, Iron River, Michigan.[2]

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

WITHDRAW

Nabach, Inc., Farmer City, Illinois, for approval to continue to engage in the provision of investment advisory services for State National Bank of Lincoln, Lincoln, Illinois.

PERMITTED

Pittsburgh National Corporation, Pittsburgh, Pennsylvania, notification of intent to engage in *de novo* activities (mortgage banking including the making, acquiring, and servicing for its own account or the accounts of others, loans and other extensions of credit) at Suite 206, 824 5th Avenue, Huntington, West Virginia, through its wholly-owned subsidiary, The Kissell Company, Springfield, Ohio (12/6/76)[3]

Dominion Bankshares Corporation, Roanoke, Virginia, notification of intent to engage in *de novo* activities (making and servicing personal loans secured by first and second mortgages; and acting as agent in the sale of credit life insurance in connection with such mortgage loans) at 2101 Executive Drive, Hampton, Virginia, through its subsidiary, State Mortgage Corporation (12/9/76)[3]

First & Merchants Corporation, Richmond, Virginia, notification of intent to engage in *de novo* activities (leasing of personal property and equipment, or acting as agent, broker, or adviser in leasing of such property; term financing using conditional sales contracts and security agreements; and making or acquiring, loans or participations in loans or other extensions of credit including construction loans and other mortgage loans on residential, multi-family and commercial real estate) at 1111 East Main Street, Richmond, Virginia, through a subsidiary, Equitable Leasing Corporation (12/6/76)[3]

Barnett Banks of Florida, Inc., Jacksonville, Florida, notification of intent to engage in *de novo* activities (providing bookkeeping and data processing services for the internal operations of the holding company and its subsidiaries and storing and processing banking, financial, or related economic data for others) at 3210 Cleveland Avenue, Fort Myers; 491 North State Road #7, Plantation; 1000 West Garden Street, Pensacola; and 1000 North Ashley, Tampa; all located in Florida, through a subsidiary, Barnett Computing Company (12/10/76)[3]

Barnett Banks of Florida, Inc., Jacksonville, Florida, notification of intent to engage in *de novo* activities (leasing personal property and equipment where at the inception of the initial lease the expectation is that the effect of the transaction will be to compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease and acting as agent, broker, or adviser in the leasing of personal property and equipment pursuant to leases of the type described in the preceding part) at 1000 North Ashley, Tampa, Florida, through a subsidiary, Barnett Leasing Company (12/10/76)[3]

Wells Fargo & Company, San Francisco, California, notification of intent to engage in *de novo* activities (making or acquiring, for its own account or for the account of others, loans and other extensions of credit; servicing loans and other extensions of credit for other persons; acting as an insurance agent or broker with respect to the following types of insurance that are directly related to the extension of credit by Wells Fargo & Company or its subsidiaries: credit life and credit accident and health insurance and mortgage redemption life insurance and group mortgage disability insurance) at 1047 W. Foothill Blvd., Upland, California, through its subsidiaries, Wells Fargo Mortgage Company and WFMC Corporation (12/11/76)[3]

APPROVED

First National Charter Corporation, Kansas City, Missouri, for permission to engage *de novo* through a subsidiary, Charter Bankers Life Insurance Company, Kansas City, Missouri (engaged in the business of underwriting, as a Missouri domiciled life insurance company, credit life and credit accident and health insurance related to extensions of credit by the holding company system)

APPLICATIONS RECEIVED

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Manufacturers Hanover Trust Company, New York, New York. Branch to be established at 100 Duffy Avenue, Hicksville (unincorporated area) Town of Oyster Bay, Nassau County.

Marion County Banking Company, Hamilton, Alabama. Branch to be established at the intersection of U.S. Highway 78 and Alabama Highway 17, Weston.

Chemical Bank and Trust Company, Midland, Michigan. Branches to be established at the following locations:
A. 2009 South Saginaw Road, Midland.
B. 3400 West Isabella Road, Midland.

* * * * *

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Bankstock One, Inc., Ozark, Arkansas, for approval to acquire 80 per cent of the voting shares of Bank of Ozark, Ozark, Arkansas.

Yoakum County Bancshares, Inc., Denver City, Texas, for approval to acquire 90.04 per cent of the voting shares (less directors' qualifying shares) of Yoakum County State Bank, Denver City, Texas.

* * * * *

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

Utah Bancorporation, Salt Lake City, Utah, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Utah Valley Bank, Orem, Utah, a proposed new bank.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

Chittenden Corporation, Burlington, Vermont, for approval to engage *de novo* in management consulting activities through an existing wholly-owned subsidiary, Chittenden Realty Credit Corporation, Burlington, Vermont (engaged in providing management consulting advice to nonaffiliated commercial banks; such advice would relate principally to the development of residential and commercial mortgage lending activities, including but not limited to, offering advice on the development of a mortgage lending operations manual, a departmental table of organization and responsibilities, and offering advice with respect to government mortgage programs and secondary mortgage markets)

[2] Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

Citicorp, New York, New York, notification of intent to engage in *de novo* activities (operating as an industrial loan company (Morris Plan) issuing thrift certificates and thrift passbook certificates; offering to sell life insurance equal to the difference between the maturity value of a thrift certificate purchase plan or periodic thrift certificate purchases over a specified term and the balance at the time of the customer's death in compliance with all applicable State laws and regulations) at Cottonwood Mall Shopping Center, Inc., 4835 South, Highland Drive, Salt Lake City, Utah and 2085 West 3500 South, Granger, Utah, through its subsidiary, Nationwide Financial Service Corporation and its subsidiary, Citicorp Person-to-Person Financial Center of Utah (12/3/76).[2]

Union Trust Bancorp, Baltimore, Maryland, notification of intent to engage in *de novo* activities (making secondary mortgage loans secured in whole or in part by mortgage, deed of trust, security agreement, or other lien on real estate situated in the State of Maryland which property is subject to the lien of one or more prior encumbrances or other leasehold interests; and acting as agent in the sale of credit life insurance and credit accident and health insurance in connection with its extension of credit) at 7801 Old Branch Avenue, Clinton, Maryland, through a subsidiary, Union Home Loan Corporation (12/8/76).[2]

Flagship Banks, Inc., Miami Beach, Florida, notification of intent to engage in *de novo* activities (acting as agent for the sale of credit life and credit accident and health insurance and other credit related insurance that is directly related to extensions of credit by the bank holding company and/or its banking and non-banking subsidiaries) at offices in Tallahassee, Melbourne, Orlando, Tavares, Sanford, Kissimmee, Titusville, Ormand Beach, Crescent City, Arcadia, Tampa, Lutz, Zephyrhills, Mulberry, Fort Meade, Hialeah, Miami, Coral Gables, St. Petersburg, Jacksonville, Boynton Beach, Okeechobee, West Palm Beach, Fort Myers, and Punta Gorda, all located in Florida, through a subsidiary, Seaforth, Inc., 5401 West Kennedy Blvd., Tampa, Florida (12/6/76) [2]

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire 100 percent of the shares of Adair Mortgage Company, Atlanta, Georgia (engaged in mortgage banking activities)

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire through and for its subsidiary, Adair Mortgage Company, Atlanta, Georgia, the loan servicing portfolio and certain assets of The Georgia Loan and Trust Company, Macon, Georgia (engaged in mortgage servicing activities)

United Banks of Colorado, Inc., Denver, Colorado, notification of intent to relocate *de novo* activities (a mortgage banking business limited to the origination and closing of real estate mortgage loans) from 102 North Cascade Avenue, Colorado Springs, Colorado to 614 North Academy Boulevard, Colorado Springs, Colorado, through a subsidiary, United Mortgage Company (12/7/76)[2]

* * * * *

REPORTS RECEIVED

None.

* * * * *

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, December 22, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-38109 Filed 12-28-76;8:45 am]

C.I.T. FINANCIAL CORP.

Determination Regarding "Grandfather" Privileges

Section 4 of the Bank Holding Company Act (12 U.S.C. 1843) provides certain privileges ("grandfather" privileges) with respect to nonbanking activities of a company that, by virtue of the 1970 Amendments to the Bank Holding Company Act, became subject to the Bank Holding Company Act. Pursuant to section 4(a)(2) of the Act, a "company covered in 1970" may continue to engage, either directly or through a subsidiary, in nonbanking activities that such a company was lawfully engaged in on June 30, 1968 (or on a date subsequent to June 30, 1968, in the case of activities carried on as a result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and has been continuously engaged in since June 30, 1968 (or such subsequent date).

Section 4(a)(2) of the Act provides, inter alia, that the Board of Governors of the Federal Reserve System may terminate such grandfather privileges, if, having due regard to the purposes of the Act, the Board determines that such action is necessary to prevent an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Notice of the Board's proposed review of grandfather privileges of C.I.T. Financial Corporation, New York, New York, and an opportunity for interested persons to submit comments and views or request a hearing, has been given (37 FR 22414 and 37 FR 25204). The time for filing comments, views, and requests has expired, and all those received, including those submitted by the Independent Insurance Agents of America (formerly the National Association of Insurance Agents) and the Independent Insurance Agents of North Carolina, have been considered by the Board in light of the factors set forth in Section 4(a)(2) of the Act.[1]

[1] During the course of the Board's review of C.I.T.'s grandfather privileges, a petition requesting a hearing on C.I.T.'s insurance activities was filed on behalf of the Independent Insurance Agents of America and the Independent Insurance Agents of North Carolina. Following an exchange of correspondence, the scope of C.I.T.'s insurance activities was clarified for the Petitioners and they subsequently withdrew their request for a hearing.

On the evidence before it, the Board makes the following findings. C.I.T. Financial Corporation ("Registrant" or "C.I.T."), New York, New York, became a bank holding company on December 31, 1970, as a result of the 1970 Amendments to the Act and by virtue of Registrant's control of 100 percent of the voting shares (less directors' qualifying shares) of National Bank of North America ("Bank"), New York, New York (assets of about $2.1 billion, as of December 31, 1970). Bank, control of which was acquired by Registrant in 1965, has total domestic deposits of approximately $2.2 billion, representing about 1.6 percent of the total deposits in commercial banks in New York State and approximately 2.3 percent of the total deposits in commercial banks in the New York City metropolitan banking market.[2] Bank, which operates 141 offices in the New York City metropolitan banking market, is the 10th largest bank in New York State and the 35th largest banking organization in the nation.

The bulk of Registrant's financial resources is concentrated in its nonbanking activities and its financial strength is not dependent upon the resources of Bank. Indeed, Registrant has served as a source of financial strength to Bank and by instituting a conservative dividend policy has enabled Bank to accumulate a very strong capital base. The Board has found no evidence of any unsound banking practices, and furthermore, actions taken by Registrant toward improving various areas of Bank's operations should enhance its prospects and overall performance.

Registrant, organized in 1924, is a diversified conglomerate which engages, either directly or through subsidiaries, in a broad range of activities but primarily banking, consumer financing, business financing, factoring, leasing of personal and real property, and acting as insurance underwriter and agent. It also engages to a lesser extent in manufacturing and merchandising, providing data processing services, making venture capital investments either directly or through limited partnerships, developing and managing real estate through limited partnerships, and controlling charitable foundations. As of December 31, 1975, C.I.T. and all of its subsidiaries had total combined assets of approximately $7 billion. Approximately 50 per cent of these assets are attributable to C.I.T.'s consumer and business finance activities, while Bank accounts for about 41 per cent of its assets. The balance is divided largely between its manufacturing and insurance subsidiaries.

C.I.T. engages in consumer financing activities ($3.9 billion of receivables outstanding on December 31, 1975) primarily through direct and indirect subsidiary companies with about 1,000 offices located throughout the United States and in

[2] Banking data as of December 31, 1975, unless otherwise noted.

Puerto Rico and Canada, and has been engaged in such activities continuously since June 30, 1968. In addition to the usual forms of consumer lending, some or all of these subsidiaries engage in purchasing retail installment obligations, financing dealers' inventories, and making second mortgage loans. C.I.T. is one of the nation's largest independent finance companies in terms of receivables with receivables of $5 billion originated during 1975. Since Registrant has been engaged in consumer financing activities continuously since June 30, 1968, these activities appear to be eligible for retention on the basis of grandfather privileges.[3]

C.I.T. engages in industrial financing and leasing activities ($1.7 billion of receivables outstanding on December 31, 1975) through a network of offices located throughout the United States and has been engaged in these activities continuously since June 30, 1968. C.I.T.'s industrial financing and leasing business covers heavy construction equipment, commercial air transport, railway rolling stock, marine tankers, material handling machinery, data processing hardware, offshore drilling rigs, and fleets of cars and trucks. These leasing activities are conducted on both a full-payout and non-full-payout basis. During 1975 C.I.T. originated $0.9 billion of industrial loans and lease receivables. In addition, C.I.T. engages in factoring and commercial financing activities primarily through three subsidiaries and has been engaged in these activities continuously since June 30, 1968. During 1975, C.I.T.'s factoring and commercial finance companies acquired receivables of approximately $3.0 million, and year-end receivables outstanding were $509.6 million. Since Registrant has been engaged in these financing, leasing, and factoring activities since June 30, 1968, and continuously thereafter, these activities appear to be eligible for retention on the basis of grandfather privileges.

C.I.T. engages in certain insurance agency and underwriting activities. Through two subsidiaries, C.I.T. underwrites life and health insurance on individuals and groups that is sold through general agents; and underwrites directly and as reinsurer credit life and credit accident and health insurance written in connection with consumer sales finance transactions and consumer personal loans. Total assets of these companies at year-end 1975 were approximately $225.1 million. C.I.T. also engages, through a subsidiary, in the underwriting of property and casualty insurance against fire, theft, collision and other physical damage risks, primarily on mobile homes, motor vehicles, recreational vehicles, and household goods which are collateral security for credit extended by subsidiaries of C.I.T. The subsidiary also underwrites such risks on direct sales made by agents and participates in insurance pools involving primary and reinsurance risks for multiple lines of insurance. In addition, C.I.T. engages in the activity of acting as agent for the sale of insurance for C.I.T. and its subsidiaries. C.I.T. does not act as agent with respect to the sale of insurance to the general public except in connection with extensions of credit by C.I.T.'s subsidiaries, and does not hold itself out as a general insurance agent. Since C.I.T. was engaged in the foregoing insurance agency and underwriting/reinsurance activities on June 30, 1968, and continuously thereafter, these activities appear to be eligible for retention on the basis of grandfather privileges.

C.I.T. engages, through subsidiaries, in leasing activities with respect to real property, and had real property lease receivables of $25.3 million at year-end 1975. The subsidiaries lease, on a full-payout basis, such property as buildings for hospital, extended care and geriatric use; related medical facilities; and residence and dining halls for educational institutions. C.I.T. was engaged in the leasing of real property on a full-payout basis on June 30, 1968, and has engaged in this activity continuously thereafter. Accordingly, this activity appears to be eligible for retention on the basis of grandfather privileges. While C.I.T. engages to some extent in the leasing of real property on a non-full-payout basis, this activity has not been engaged in Continuously since June 30, 1968, and C.I.T is not entitled to, nor does it make any claim to, grandfather privileges with respect to this activity.

C.I.T. owns subsidiaries that engage in various manufacturing and merchandising activities (combined assets of $358.8 million at year-end 1975). The Picker Corporation (assets of $191.6 million as of December 31, 1975), manufactures and supplies to the medical profession, clinics, and hospitals a varied line of x-ray apparatus, equipment and accessories manufactured by others. It also produces ultrasonic devices and nuclear instrumentation and radioactive isotope devices for clinical diagnosis and laboratory and therapy uses. C.I.T. states that the Picker Corporation's executive offices and principal manufacturing facility are located in Cleveland, Ohio; that sales and service facilities include 25 offices located throughout the United States and 12 offices throughout Canada; and that there are wholly-owned subsidiaries, sales representatives or distributors in more than 70 foreign countries. Gibson Greeting Cards, Inc. (assets of $121.8 million, as of December 31, 1975), manufactures and distributes greeting cards, gift wrapping, and other assorted related products. The executive offices are located in Cincinnati, Ohio, and the principal manufacturing facilities are located in Cincinnati, Ohio, and Memphis, Tennessee. Sales facilities are located throughout the United States. All-Steel Inc. (assets of $34.9 million, as of December 31, 1975), manufactures and distributes metal office furniture. Two affiliates of All-Steel Inc. manufacture and distribute metal office furniture and equipment in Canada. The executive offices and principal manufacturing operations of All-Steel Inc. are located in Aurora, Illinois; sales facilities are located throughout the United States. Raco, Inc. (assets of $20.4 million, as of December 31, 1975), manufactures electrical outlet, junction and switch boxes and related fittings. Its executive offices and principal manufacturing operations are located in South Bend, Indiana; sales representatives and distributors are located throughout the United States. It appears that C.I.T. was engaged in the above-mentioned manufacturing and merchandising activities on June 30, 1968, and has been engaged in these activities continuously thereafter. Accordingly, these activities appear to be eligible for retention on the basis of grandfather privileges.[4] In addition, one

[3] C.I.T. acquired, as going concerns, certain consumer finance subsidiaries between June 30, 1968 and December 31, 1970. Although C.I.T.'s finance activities appear to be eligible for retention on the basis of grandfather privileges, the provisions of sections 4(a)(2) and 4(c)(11) of the Act preclude the retention beyond December 31, 1980, of interests in or assets of going concerns acquired by a bank holding company between June 30, 1968 and December 31, 1970. Accordingly, in order for C.I.T. to retain these subsidiaries, Board approval must be obtained pursuant to one of the exemptions provided in section 4(c) of the Act. The Board's determination with respect to C.I.T.'s grandfather privileges does not imply present or future approval of any such application for retention that C.I.T. may file, since each would be separately considered by the Board on the basis of the statutory factors set forth in the Act.

In addition, C.I.T. acquired a number of de novo finance company subsidiaries on dates between June 30, 1968 and December 31, 1970. Section 4(c)(11) of the Act, in effect, exempts the creation of de novo companies engaged in indefinitely grandfathered activities from the prohibitions of section 4 of the Act. While it may be argued that this section would apply only to de novo companies acquired subsequent to the addition of this section of the Act, i.e., subsequent to December 31, 1970, the Board notes that the only distinction between the de novo companies acquired prior to December 31, 1970, and the de novo companies acquired subsequent to that date is the intervention of the enactment of the 1970 Amendments and the section 4(c)(11) exemption contained therein. In view of this, the Board believes that a proper interpretation of section 4(c)(11) would apply the exemption of that section to the pre-December 31, 1970 de novo companies and that no useful purpose would be served by requiring C.I.T. to apply for retention of those companies. Accordingly, C.I.T. may retain the finance company subsidiaries acquired de novo between June 30, 1968 and December 31, 1970.

[4] This determination is not authority to enter into any new activities that were not engaged in on June 30, 1968, and continuously thereafter. The Board does not regard "manufacturing" as an activity in and of itself for purposes of grandfather privileges pursuant to section 4(a)(2), but rather looks to the product lines of manufacturing in which a Registrant has been continuously engaged since June 30, 1968. While the Board believes that C.I.T. may incorporate technological improvements to existing product lines, C.I.T. may not expand such product lines without Board concurrence that such expansion is consistent with C.I.T.'s grandfather privileges.

subsidiary of The Picker Corporation, Picker Briggs Corporation, Cleveland, Ohio, was acquired as a going concern after June 30, 1968. Accordingly, pursuant to the provisions of section 4(a) (2) of the Act, C.I.T. may not retain Picker Briggs Corporation beyond December 31, 1980.

C.I.T. engages directly in data processing activities including the sale or sublease of computer time, the provision of payroll processing services, life insurance file processing, accounting and delivery scheduling and similar automated data processing services, and the sale or licensing of software initially developed by C.I.T. for its own use. In 1975 C.I.T. had receivables of $75,179 as a result of the data processing services provided to firms not affiliated with C.I.T. Since C.I.T. has engaged in this activity continuously since June 30, 1968, it appears to be eligible for retention on the basis of grandfather privileges.

C.I.T., directly and through subsidiaries, makes venture capital investments. These venture capital investments are made either directly to the borrowing companies, or indirectly through the medium of limited partnerships in which C.I.T. invests equity capital as a limited partner. C.I.T. does not claim grandfather privileges for the venture capital investments that it makes directly and has stated that all such investments will be brought below 5 percent of the shares of any company by December 31, 1980. With respect to C.I.T.'s interests in limited partnerships, such activities have not been engaged in continuously since June 30, 1968 and are not eligible for retention on the basis of grandfather privileges.[5]

C.I.T. has invested, since 1970, through its subsidiary C.I.T. Realty Corporation, in two limited partnerships organized to construct and operate moderate and low income apartment projects in New York City under the Private Housing Finance Law of the State of New York. C.I.T. has an aggregate 95 percent investment in both limited partnerships. In return, C.I.T., through its subsidiary, obtains 90 percent of the tax benefits accruing to the partnerships. such as interest deductions and depreciation. C.I.T. claims grandfather privileges for these investments on the ground that this is nothing more than a traditional but innovative form of financing; i.e., a business finance transaction similar in substance to those for which C.I.T. has grandfather privileges.[6] The Board does not believe that C.I.T.'s investment in these limited partnerships can be properly viewed as a form of general business lending. In particular, it is noted that in a lending transaction, the lender does not receive direct income tax benefits in the form of interest deductions and depreciation, as C.I.T. does in this instance. Accordingly, given the nature of such interests, the Board views C.I.T.'s participation in the development and management of real estate through these limited partnerships as an activity different in form and substance from that of general business lending. Since this activity was commenced after June 30, 1968, C.I.T. is not entitled to indefinite grandfather privileges with respect to it and may not retain such interests beyond December 31, 1980. Of course, this Determination does not preclude C.I.T. from filing an application pursuant to section 4(c) (8) of the Act for retention of such interests nor does it constitute a finding by the Board that such interests would be permissible under that section.

C.I.T. has caused to be created three charitable foundations that are engaged primarily in charitable activities, including making grants to institutions organized exclusively for religious, charitable, scientific, literary, or educational goals. Since these foundations were created prior to June 30, 1968, C.I.T. may continue its relationship with them on the basis of indefinite grandfather authority.

In addition to the above-described activities, C.I.T., from time to time, makes acquisitions in satisfaction of debts previously contracted ("dpc"), which include acquisitions of more than 5 percent of the shares of stock of certain companies.[7] C.I.T. asserts a claim to making and holding "dpc" acquisitions as a necessary and incidental part of its indefinitely grandfathered lending activities. Accordingly, C.I.T. asserts that the acquisitions which it makes or holds "dpc" may be retained on the basis of grandfather privileges without limitation or restriction, regardless of whether such acquisitions were made before or after December 31, 1970. While the Board agrees that a bona fide "dpc" acquisition may be regarded as normal, necessary and incidental to the business of lending, holding such "dpc" interests without restriction or limitation is not integral or necessary to the business of lending. Thus, the Board rejects C.I.T.'s contention that holding such property without restriction or limitation is within the scope of the grandfathered lending activities.[8]

On the basis of the foregoing and all the facts before the Board, it appears that the volume, scope, and nature of the activities of Registrant described herein do not demonstrate an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

There appears to be no reason to require Registrant to terminate its grandfathered interests. It is the Board's judgment that, at this time, termination of the grandfather privileges of Registrant described herein is not necessary in order to prevent an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. This determination is not authority to enter into any new activity or product extension that was not engaged in on June 30, 1968, and continuously thereafter, or any activity that is not the subject of this determination.

A significant alteration in the nature or extent of Registrant's activities or a change in location thereof (significantly different from any described in this determination) will be cause for a reevaluation by the Board of Registrant's activities under the provisions of section 4(a) (2) of the Act, that is, whenever the alteration or change is such that the Board finds that a termination of the grandfather privileges is necessary to prevent an undue concentration of resources or any of the other adverse consequences at which the Act is directed. No merger, consolidation, acquisition of assets other than in the ordinary course of business, nor acquisition of any interest in a going concern, to which the Registrant or any nonbank subsidiary thereof is a party, may be consummated without prior approval of the Board. Further, the provision of any credit, property, or service by the Registrant or any subsidiary thereof shall not be subject to any condition which, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970.

The determination herein does not preclude a later review, by the Board, of Registrant's nonbank activities and a future determination by the Board in favor of termination of grandfather benefits of Registrant. The determination herein is subject to the Board's authority to require modification or termination of the activities of Registrant or any of its nonbanking subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

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[5] C.I.T. also claims exemptions for holding these limited partnership interests under other provisions of the Act. The question of the applicability of those exemptions to limited partnership interests is under consideration. However, the volume of scope of C.I.T.'s venture capital limited partnership interests amount to approximately $3.25 million and the Board does not regard them of sufficient magnitude to warrant delay of this Determination pending resolution of that issue.

[6] C.I.T. also claims sections 4(c) (6) and 4(c) (7) as possible exemptions for these limited partnership interests; however, the Board concludes that these exemptions are not available to C.I.T. After examining the nature and scope of C.I.T.'s involvement in the business of these partnerships, the Board has determined that C.I.T. must be deemed to be engaged in that business. Because section 4(a) (2) of the Act prohibits engaging in an activity without Board approval, the provisions of sections 4(c) (6) and 4(c) (7), which are intended to exempt small passive investments, do not provide authority for this activity.

[7] By virtue of section 4(c) (6) of the Act, the acquisition of 5 per cent or less of the outstanding voting shares of any company is exempt from the prohibitions of section 4.

[8] The Board is considering the question of the permissible time period that should be allowed for the holding of "dpc" acquisitions. The Board's determination with respect to that question will be announced at a later date.

By determination of the Board of Governors,* effective December 20, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-38110 Filed 12-28-76;8:45 am]

T.N.B. FINANCIAL CORP.

Acquisition of Bank

T.N.B. Financial Corp., Springfield, Massachusetts, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to The First National Bank of Athol, Athol, Massachusetts. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 24, 1977.

Board of Governors of the Federal Reserve System, December 21, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-38111 Filed 12-28-76;8:45 am]

UTAH BANCORP.

Acquisition of Bank

Utah Bancorporation, Salt Lake City, Utah, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Utah Valley Bank, Orem, Utah. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 12, 1977.

Board of Governors of the Federal Reserve System, December 21, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-38112 Filed 12-28-76;8:45 am]

YOAKUM COUNTY BANCSHARES, INC.

Formation of Bank Holding Company

Yoakum County Bancshares, Inc., Denver City, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 96.04 percent or more of the voting shares of Yoakum County State Bank, Denver City, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 19, 1977.

Board of Governors of the Federal Reserve System, December 21, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-38113 Filed 12-28-76;8:45 am]

*Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson, Partee, and Lilly.

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on December 21, 1976. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB and FPC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before January 18, 1977, and should be addresssed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5216, 425 I Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-376-5425.

FEDERAL POWER COMMISSION

FPC requests clearance of revisions to three schedule pages of Form No. 1, Annual Report for Public Utilities, Licensees and Others (Class A and Class B) prescribed by Section 141.1, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting consistent with the establishment of a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) proposed in the Notice of Proposed Rulemaking in Docket No. RM75-27 issued May 20, 1975 (40 FR 23322, May 29, 1975). The revisions will be effective for the reporting year 1977. Potential respondents are the 289 electric utilities and hydroelectric licensees presently subject to the Commission's reporting requirements. FPC estimates the average additional burden per annual response to be one hour.

FPC requests clearance of revisions to one schedule page of Form No. 1-F, Annual Report for Public Utilities and Licensees (Class C and Class D) prescribed by Section 141.2, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting consistent with the establishment of a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) proposed in the Notice of Proposed Rulemaking in Docket No. RM75-27 issued May 20, 1975 (40 FR 23322, May 29, 1975). The revisions will be effective for the reporting year 1977. Potential respondents are the 12 electric utilities and hydroelectric licensees presently subject to the Commission's reporting requirements. FPC estimates average additional burden to be one hour per annual response.

FPC requests clearance of revisions to three schedule pages of Form No. 2, Annual Report of Natural Gas Companies (Class A and Class B) prescribed by Section 260.1, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting consistent with the establishment of a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) proposed in the Notice of Proposed Rulemaking in Docket No. RM75-27 issued May 20, 1975 (40 FR 23322, May 29, 1975). The revisions will be effective for the reporting year 1977. Potential respondents are the 82 natural gas companies presently subject to the Commission's reporting requirements. FPC estimates the average additional burden per annual response to be one hour.

FPC requests clearance of revisions to one schedule page of Form No. 2-A, Annual Report of Natural Gas Companies (Class C and Class D) prescribed by Section 260.2, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting consistent with the establishment of a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) proposed in the Notice of Proposed Rulemaking in Docket No. RM75-27 issued May 20, 1975 (40 FR 23322, May 29, 1975). The revisions will be effective for the reporting year 1977. Potential respondents are the 24 natural gas companies presently subject to the Commission's reporting requirements. FPC estimates the average

additional burden per annual response to be one hour.

FPC requests clearance of revisions to the Form No. 5, Monthly Statement of Electric Operating Revenue and Income prescribed by Section 141.25, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting consistent with the establishment of a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) proposed in the Notice of Proposed Rulemaking in Docket No. RM75-27 issued May 20, 1975 (40 FR 23322, May 29, 1975). The revisions will be effective for reporting year 1977, beginning with the monthly report for January 1977 to be filed by March 12, 1977. Potential respondents are the 240 electric utilities and hydroelectric licensees presently subject to the Commission's reporting requirements. FPC estimates the average additional burden per annual response to be one hour.

FPC requests clearance of revisions to page one of the Form No. 11, Natural Gas Pipeline Company Monthly Statement prescribed by Section 260.3, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting consistent with the establishment of a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) proposed in the Notice of Proposed Rulemaking in Docket No. RM75-27 issued May 20, 1975 (40 FR 23322, May 29, 1975). The revisions will be effective for reporting year 1977, beginning with the monthly report on January 1977, to be filed by March 12, 1977. Potential respondents are the 34 major interstate natural gas companies presently subject to the Commission's reporting requirements. FPC estimates the average additional burden per annual response to be one hour.

CIVIL AERONAUTICS BOARD

CAB requests clearance of the reporting requirements in Part 221a of the Board's Economic Regulations—Fare Summaries. Part 221a requires certificated air carriers to make available to the public concise and easily understandable information concerning the various normal and discount passenger fares they offer in scheduled service that they perform in interstate and overseas air transportation, so that persons contemplating air travel can make an informed choice of the alternative fares and select those best suited to their needs. Summaries of this information must be submitted to the Board at times specified in Part 221a. These submissions are required under the Federal Aviation Act of 1958, as amended. Potential respondents are 36 certificated route air carriers and CAB estimates burden to average 15 minutes for each submission of the summaries.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.76-38135 Filed 12-28-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

IMMUNIZATION PRACTICES ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.
Date: December 29, 1976.
Place: Room 207, Building 1, Center for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.
Time: 1-5 p.m.
Type of Meeting: Open.
Contact Person: H. Bruce Dull, M.D., Executive Secretary of Committee, Building 1, Room 2118, Center for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Phone: AC/404 633-3311, Extension 3701. FTS: 236-3701.
Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents for public health practice.
Agenda: The Committee will review the information on the association of Guillain-Barre syndrome and influenza vaccination.

The usual requirement for 15 days' advance notice of this emergency meeting is impossible to meet due to recent developments in the influenza immunization program.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: December 23, 1976.

DAVID J. SENCER,
Director, Center for Disease Control.

[FR Doc.76-38314 Filed 12-28-76;8:45 am]

Office of the Secretary

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Social Services and Welfare Subcommittee of the Secretary's Advisory Committee on the Rights and Responsibilities of Women will meet on Thursday, and Friday, January 13-14, 1977, from 9:00 a.m. to 5:00 p.m. each day in Room 624-D, HEW—South Portal Building, 200 Independence Avenue, S.W., Washington, D.C. The Social Services and Welfare Subcommittee is one of the five subcommittees of the Secretary's Advisory Committee on the Rights and Responsibilities of Women mandated to advise the Secretary concerning the needs of women for social services, including income-security programs and proposals. The agenda for the Social Services and Welfare Subcommittee will include finalizing the Subcommittee's report on Female-Headed Families with Children.

Interested persons wishing to address the Committee, should contact the Secretary's Advisory Committee on the Rights and Responsibilities of Women by COB Wednesday, January 5. Phone: 202-245-8454. Written statements received by January 5 will be duplicated and distributed to the members. Members of the public are invited to attend the meeting.

Dated: December 9, 1976.

SANDRA S. KRAMER,
Executive Director, Secretary's Advisory Committee on the Rights and Responsibilities of Women.

[FR Doc.76-38125 Filed 12-28-76;8:45 am]

Assistant Secretary for Education

COMMENTS ON COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

National Center for Education Statistics

Pursuant to section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The National Center for Education Statistics and the U.S. Office of Education have proposed collections of information and data acquisition activities, which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to afford each educational agency or institution subject to a request under the proposed collection of information and data acquisition activities and their representative organizations an opportunity, during a 30-day period before transmittal to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collections of information and data acquisition activities.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activities are invited. Comments must be received on or before January 28, 1977 and should be addressed to Administrator, National Center for Education Statistics, ATTN: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

Dated: December 17, 1976.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITIONING ACTIVITY

1. Agency/bureau/office—National Center for Education Statistics.
2. Agency form number—NCES 2389.
3. Title of proposed activity—Survey of characteristics of students in public and private noncollegiate postsecondary schools.
4. Legislative authority for this activity—"* * * The (national) center (for education statistics) shall—* * * collect, collate, and, from time to time, report full and complete statistics on the condition of education in the

United States * * *" (Sec. 501. (a) of Pub. L. 93-380; Sec. 406.(b) of the General Education Provision Act, 20 U.S.C. 1221e-1).

5. Voluntary/obligatory nature of the response—Voluntary.

6. How information to be collected will be used—The information will be used as the sampling frame for the proposed survey of characteristics of students in public and private noncollegiate postsecondary schools. The statistics subsequently collected through questionnaires addresed to a sample of students will be used in the following manners:

By manpower researchers: tap sources of labor supply for particular occupations;

By educational planners: establish broader base from which to develop occupational programs by taking into account individuals' reasons in selecting programs and their objectives;

By legislators and policy planners: provide knowledge of options open for achieving a more balanced labor supply and direct attention to steps needed to equalize educational opportunity among various student groups;

By postsecondary planning commissions: supply basic data on both institutions and individuals in the noncollegiate sector;

By federal student aid planners and administrators: identify more accurately trends and concentrations of student groups requiring financial aid and evaluate impact of cost in students' decisions of vocational schools; and

By career guidance counselors: provide basic demographic data in clarifying types of individuals enrolled in career training schools and the motivational factors involved in choosing vocational training.

7. Data acquisition plan—a. Method of collection: Mail; b. Time of collection: January/February, 1977; and c. Frequency: Single time.

8. Respondents—a. Type: Vocational/technical postsecondary institutions; b. Number: Sample: 565 institutions; and c. Estimated number of man-hours per respondent: 30 minutes.

9. Information to be collected—A list of names, addresses and telephone numbers of students in specified programs. This information will be collected in compliance with the provisions of Section 438 of the General Education Provisions Act (20 U.S.C. 1232g) relating to the protection of the rights and privacy of parents and students.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Agency/bureau/office—U.S. Office of Education, Office of Planning, Budgeting and Evaluation.

2. Agency form number—OE 502- 11, 12, 13.

3. Title of proposed activity—A study of the sustaining effects of compensatory education on basic skills: District cost and characteristics questionnaire and cost data interview guide.

4. Legislative authority for this activity—"* * * The Secretary shall transmit (to specified committees of the Congress) an annual evaluation report which evaluates the effectiveness of applicable programs * * *

* * * such report shall (among other things) * * * describe the cost and benefits of the applicable program being evaluated * * * and identify which sectors of the public receive the benefits of such programs * * *

In the case of programs and projects assisted under Title I of the Elementary and Secondary Education Act of 1965, the report under this subsection shall include a survey of how many of the children counted under section 103(c) of such Act participate in such programs and projects, and how many children do not, and a survey of how many educationally disadvantaged children participate in such programs and projects, and how many educationally disadvantaged children do not * * *" (Pub. L. 93-380, Sec. 506(a)(3)(c); Part B, Subpart 2, Sec. 417(a) of the General Education Provisions Act as amended; 20 USC 1226c.

5. Voluntary/obligatory nature of response—Voluntary.

6. How information to be collected will be used—This material is part of a total study that is needed to provide information on the numbers of educationally and economically disadvantaged children who do and do not receive compensatory services, the nature of such services and how recipients benefit from them over an extended period of time. The results of the study, as they become available, will be included in the Annual Evaluation Report to Congress (20 U.S.C. 1226c). Such results will be used as part of a basis for legislative proposals and for USOE planning and budgeting functions.

The particular information sought in this portion of the study will be used to determine the cost of compensatory education through a resource utilization approach and to ascertain district policies that affect the conduct of compensatory projects at the school building level.

Summary results (including the nature of the most effective projects) will be distributed to appropriate members of Congress and their staffs, to State and local Title I personnel and to other interested parties.

7. Data acquisition plan—a. Method of collection: Mail and personal interview.

b. Time of collection: Each Spring for three successive years.

c. Frequency: Annually.

8. Respondents—a. Type: Local education agencies.

b. Number: 269.

c. Estimated average man-hours per respondent: 3.2.

a. Type: Principals (elementary).

b. Number: 45.

c. Estimated average man-hours per respondent: 2.

a. Type: Teachers (elementary). b. Number: 45. c. Estimated average man-hours per respondent: 1.

9. Information to be collected—Respondent type: Local educational agencies.

Expenditure of regular and compensatory funds by district and selected individual schools.

Student enrollment by grades by districts.

Number of district (FTE) employees by various job categories.

Descriptions of: district testing practices; district staff involvement in program decisions.

Number of elementary schools having different instructional approaches.

Use of Title I funds—viz. allocation practices, parent involvement, non-public school involvement.

Respondent type: Principals (elementary). Descriptions of resources used for compensatory instruction in basic skills.

Respondent type: Teachers (elementary). Frequency of resource utilization for compensatory instruction in basic skills.

[FR Doc.76-38107 Filed 12-28-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N-76-673]

DELAWARE BAY ESTATES

Hearing

In the matter of: Delaware Bay Estates, Atlantic City Lots, Inc. and Sidney Simon, President, 76-285-IS, OILSR No. 0-2327-35-10.

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b)

Notice is hereby given that:

1. Delaware Bay Estates, Atlantic City Lots, Inc. and Sidney Simon, President, authorized agents and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1710,et seq.) received a Notice of Proceedings and Opportunity for Hearing issued September 24, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 C.F.R. 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Delaware Bay Estates subdivision located in Cumberland County, New Jersey, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 18, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on January 28, 1977 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before January 5, 1977.

6. The Respondent is *hereby notified* That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: November 23, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76-38137 Filed 12-28-76;8:45 am]

[Docket No. N-76-674]

FLOR-A-MAR/GULF HARBORS

Hearing

In the matter of: Flor-A-Mar/Gulf Harbors, Lindrick Corporation and John

H. Evans, President, 76-233-IS, OILSR No. 0-2522-09-750 (A), (B), (C), and (D)

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b)

Notice is hereby given that:

1. Flor-A-Mar/Gulf Harbors, Lindrick Corporation and John H. Evans, President, authorized agents and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued September 16, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 C.F.R. 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Flor-A-Mar/Gulf Harbors, located in Pasco County, Florida, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 19, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.-160(d), *It is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on February 3, 1977 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410 on or before January 14, 1977.

6. The Respondent is *Hereby notified*, That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: November 23, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76-38138 Filed 12-28-76;8:45 am]

Office of the Secretary

[Docket No. D-76-472]

NEW YORK, BUFFALO, NEWARK, CAMDEN AND CARIBBEAN AREA OFFICES AND ALBANY INSURING OFFICE

Establishment of Property Disposition Committees and Redelegation of Authority

The redelegation of authority and assignment of functions with respect to the Central Office Property Disposition Committee, published at 35 FR 4022 and amended at 35 FR 16102 and 36 FR 14229, has been revised and published at 41 FR 26946, as amended at 41 FR 52545. Effective July 2, 1976, there was established in each Regional Office a Regional Office Property Disposition Committee (herein called the Regional Office Committee) to which has been redelegated the authority of the Central Office Property Disposition Committee. The redelegation of authority to the Regional Office Committee authorized each Regional Administrator and each Deputy Regional Administrator to establish in any Area Office an Area Office Property Disposition Committee and to establish in any Insuring Office an Insuring Office Property Disposition Committee and to redelegate to each such Committee the power and the authority of the Regional Office Committee within the jurisdiction of the Area or Insuring Office.

SECTION A. REDELEGATION TO AREA AND INSURING OFFICES

(1) Pursuant to such authority there is hereby established in each of the New York, Buffalo, Newark, Camden and Caribbean Area Offices an Area Office Property Disposition Committee.

(2) Pursuant to such authority there is hereby established in the Albany Insuring Office an Insuring Office Property Disposition Committee.

(3) All power and authority of the Regional Office Committee, Region II, within the jurisdiction of each of the above Offices is hereby redelegated to the respective Committees hereby established. The composition of said Committees and the applicable procedures shall be as set forth in "Property Disposition Committees, Redelegation of Authority", published on June 30, 1976 at 41 F.R. 26946.

Effective date: This redelegation of authority is effective as of August 21, 1976.

Issued at New York, N.Y.

S. WILLIAM GREEN,
Regional Administrator,
Region II, New York.

DECEMBER 6, 1976.

[FR Doc.76-38136 Filed 12-28-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Mines

INTERIOR COAL ADVISORY COMMITTEE

Ad Hoc Steering Subcommittee Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Ad hoc Steering Subcommittee of the Interior Coal Advisory Committee will be held Friday, January 14, 1977, commencing at 9:00 a.m., in Room 7000, Interior Building, 18th and C Streets, NW., Washington, D.C.

The Interior Coal Advisory Committee was established to advise the Secretary of the Interior and to recomend positions for policy formation and implementation leading to increase the domestic production and use of coal, consistent with national energy, economic and environmental goals.

The purpose of the Ad hoc Steering Subcommittee meeting is to establish an organizational structure and plans for the Interior Coal Advisory Committee to permit the Committee to carry out its responsibilities.

The meeting will be open to the public and space will be provided for approximately 20 persons to attend the meeting in addition to the Committee members.

Further information concerning this meeting may be obtained from Mr. John S. Hoover, Executive Secretary, Room 6043, Bureau of Mines, Department of the Interior, Columbia Plaza, 2401 E Street, NW., Washington, D.C. 20241, telephone number (202) 634-1030. Minutes of the meeting will be available 30 days from the date of the meeting upon written request to the Eexcutive Secretary.

Dated: December 22, 1976.

THOMAS V. FALKIE,
Director, Bureau of Mines.

[FR Doc.76-38117 Filed 12-28-76;8:45 am]

Fish and Wildlife Service

MARINE MAMMALS

Administrative and Status Report 1976

The following report of Administrative actions and the status of marine mammals under the jurisdiction of the Department of the Interior is hereby published in the FEDERAL REGISTER in compliance with section 103(f) of the Marine Mammal Protection Act of 1972 (Public Law 92-522).

The Department of the Interior, under section 3(12)(B) of the Act is responsible for the following marine mammals: walrus, polar bear, sea otter, manatee, and dugong. This report is current as of June 21, 1976.

Issued at Washington, D.C., and dated December 20, 1976.

LYNN A. GREENWALT,
Director.

ADMINISTRATION OF THE MARINE MAMMAL PROTECTION ACT OF 1972

JUNE 1976

Report of the Department of the Interior

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Prepared by U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 1976.

Administration of the Marine Mammal Protection Act of 1972

June 22, 1975 to June 21, 1976

Introduction

Authority

Pursuant to the requirements of Section 103(f) of the Marine Mammal Protection Act of 1972 (86 Stat. 1027; hereinafter, the "Act") this report describes administrative actions and the status of certain species of marine mammals. The report covers the period June 22, 1975, through June 21, 1976, and is presented in three parts: administrative actions; species status reports; and appendices.

Under Section 3(12)B of the Act, the Department of the Interior is responsible for the following marine mammals: walrus, polar bear, sea otter, manatee, and dugong. The Secretary of the Interior has delegated authority for the functions prescribed by the Act to the Director, U.S. Fish and Wildlife Service, as prescribed in 242.1.1 of the Departmental Manual.

Congressional Oversight Hearings

The Honorable Robert L. Leggett, Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, called an oversight hearing on October 21, 1975, on the Marine Mammal Protection Act of 1972 and a wrap-up session on December 9, 1975; Director Lynn A. Greenwalt, U.S. Fish and Wildlife Service, testified on Federal/State cooperation, marine mammal research, enforcement of the Act, issuance of permits and the State of Alaska request to waive the moratorium and return management of nine species of marine mammals.

Marine Mammal Commission

Title II of the Act established a Marine Mammal Commission and a nine member Committee of Scientific advisors. The Act prescribes extensive consultative roles for the Commission and the Committee with the Secretaries of Interior and Commerce. Contact with the Commission, through its staff, is on an almost daily basis. The formal review of permit applications, section 110 grant proposals and waiver of the moratorium requests are accomplished through established procedures.

The Commissioners are: Victor Scheffer, Chairman, Bellvue, Washington. Mr. Scheffer is a marine mammal biologist retired from the U.S. Fish and Wildlife Service. Donald B. Siniff, St. Paul, Minnesota. Dr. Siniff is a Professor in the Department of Ecology and Behavioral Biology, University of Minnesota, St. Paul, Minnesota, Richard A. Cooley, Santa Cruz, California. Dr. Cooley is the Academic Assistant to the Chancellor at the University of California, Santa Cruz, California.

The Marine Mammal Commission is an independent body and reports to Congress annually.

Part I—Administrative Actions

Regulations

Four significant sets of regulations pertaining to the Act were published in the Federal Register by the Fish and Wildlife Service during the period covered by this report.

On December 24, 1975, the Director of the Service published a final decision in the proceeding concerning waiver of the moratorium on the taking of Pacific walrus (40 FR 59459) (Appendix A). The Director determined that it was appropriate to waive the moratorium but conditioned lifting the moratorium and returning management to the State of Alaska on his approval of the State's laws and regulations relating to management. As part of the Director's decision, a draft of a new subpart H was published for use by the Service as a guide in the development of regulations imposing specific Federal limitations on the taking and importation of Pacific walrus.

On the same day the Service published in final form a new subpart F entitled "Waiver of the Moratorium—State Laws and Regulations." (40 FR 59442) (Appendix B). These regulations had been revised in accordance with the Director's decision and the recommended decision of the administrative law judge who served as a presiding officer at the hearings which were held to consider the waiver.

On February 6, 1976, the Service published procedural regulations (Appendix C) applicable to hearings held under section 103(d) of the Act (40 FR 5395). These regulations, which became effective on March 8, 1976, expanded the application of existing procedural rules from Pacific walrus to all marine mammals over which the Service has jurisdiction.

On April 5, 1976, the Director published notice of his final approval of the State of Alaska's laws and regulations (Appendix D) governing management of Pacific walrus. (41 FR 14372). In the same publication, final regulations limiting the taking and importation of Pacific walrus managed by the State of Alaska were promulgated. These regulations were contained in a new subpart H entitled "Waiver of Moratorium of Taking and Importation of Individual Marine Mammal Species." Publication of the Director's approval of State laws and regulations, along with promulgation of the new subpart H, affected return of management of the Pacific walrus to the State of Alaska. Because immediate implementation of the State's management program was considered essential to control the flow of raw walrus ivory, subpart H became effective upon publication.

On April 9, 1976, the Service published proposed regulations to amend the existing subpart F, "Waiver of the Moratorium—State Laws and Regulations," and subpart H, "Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species," to apply to all marine mammals over which the Service has jurisdiction (41 FR 15166) (Appendix E). The proposed amendment would allow any State to submit a request for return of management of Pacific walrus, polar bears, or sea otters within its jurisdiction and provides specific Federal limitations on the management by a State of those species. Public hearings were held on subpart H, as required by Section 103(d) of the Act. The first hearing was held in Alaska in July 1976 and the second in October in Washington, D.C. Notice of the times and places for the public hearing was published by presiding officer Malcom P. Littlefield on May 28, 1976 (41 FR 21832) (Appendix F). After conclusion of the required hearings and review of the presiding officer's recommended decision, the Director will, if appropriate, publish the proposed rules for subpart H as final rules. Subpart F, as amended by the proposal, will be published in final form in the near future.

Waiver of the Moratorium

The State of Alaska has applied to the Secretary to waive the moratorium with respect to walrus, sea otter, and polar bear, and return management of these species to the State. A similar request has been made of the Secretary of Commerce with respect to northern sea lions, harbor and spotted seals, ringed seals, bearded seals, ribbon seals, and beluga whales. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service are jointly considering the request and have issued a draft environmental impact statement (DEIS) covering all species requested. This DEIS was filed with the Council on Environmental Quality on March 5, 1976. Consideration of the waiver will involve an agency hearing before an Administrative Law Judge regarding the extent that a waiver that may be granted and whether State laws and regulations are consistent with the purposes and policies of the Act under Section 109 before management can be returned to the State.

A major problem in preparing the DEIS related to application of the terms "optimum sustainable population" (OSP) and "optimum carrying capacity" as used in the Act. The major objective of the Act, in the management of marine mammals, is to insure that such species and population stocks not be permitted "to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part." Consistent with this major objective, they should not be permitted to diminish below their OSP. There is not yet wide agreement within the scientific community on the meaning of OSP or its relationship to maximum sustainable yield. Another problem in preparing the DEIS was the lack of published scientific information on some species of marine mammals involved in the Alaska request for a waiver.

ENFORCEMENT

United States Fish and Wildlife Service Special Agents initiated 183 Marine Mammal Cases during this report period. Fifty-one of these cases, primarily importations through Interior-designated ports, were referred to the National Marine Fisheries Service. To date 118 cases have been closed.

The following is a partial breakdown of the types of investigations handled by FWS Special Agents:

11 investigations involved walrus; 10 investigations involved polar bear; 2 investigations involved sea otters.

Half of the approximately 88 cases now pending involve gift shops. These will be routinely inspected for dealers' sources of types of marine mammal products for sale, and for possible violations of the Marine Mammal Protection Act.

PUBLIC DISPLAY AND SCIENTIFIC RESEARCH PERMITS

Section 101(a)(1) of the Act and § 18.31 of the regulations governing the taking and importing of marine mammals authorize the Director (by delegation) to issue permits to take and import marine mammals and marine mammal products for the purposes of scientific research and public display.

The Act declares a moratorium on the taking or importing of marine mammals and marine mammal products, however, the Act included exceptions that allow research on marine mammals and taking of marine mammals for public display, providing that the health and well-being of the marine mammal species and populations involved as well as the marine ecosystem are not adversely affected. Permits may, however, be granted only after a review of the applications by the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals.

The Fish and Wildlife Service has been working in close cooperation with the Marine Mammal Commission, the National Marine Fisheries Services, and the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture, as well as representatives of the display industry, to develop standards for the care and maintenance of captive marine mammals. In October 1975, these efforts resulted in a set of standards and guidelines, prepared by the Marine Mammal Commission. The Fish and Wildlife Service, National Marine Fisheries Service and Animal and Plant Health Inspection Service under the authority of the Animal Welfare Act of 1970 have been developing means by which these standards and guidelines will be implemented by the involved Federal agencies.

The Fish and Wildlife Service received 19 applications for scientific research and public display permits during the period of this report. Eight permits were issued; one application was denied; one was withdrawn; and nine are pending. Actions taken on these applications are summarized below:

SCIENTIFIC RESEARCH PERMIT APPLICATIONS

To capture and tag up to 10 sea otters; to attach telemetry equipment to no more than 3 of these 10; and to possess carcasses of sea otters killed accidentally or found dead. (University of California, Los Angeles, California.) Issued June 23, 1975. An amendment was issued January 19, 1976, stating Block 11 D: Number of permitted subjects is increased from 10 to 40 for capturing and tagging; from 3 to 15 for attaching telemetry equipment. All subjects are to be released at capture site.

To capture, hold, attach radio telemetry equipment, anesthetize if necessary, color mark and make scientific studies on no more than 25 sea otters from the Pacific Coast off Monterey and Santa Cruz counties, California. The permit holder may salvage any sea otters found injured or dead and any sea otters injured or killed as result of permitted activity. Dead sea otters are to be preserved to facilitate scientific research—Amendment to 9–22–C. (Daniel P. Costa, Coastal Marine Lab, University of California, Santa Cruz, California.) Issued August 29, 1975.

An amendment was issued October 7, 1975, stating the number of subjects of the study reduced from 25 to 10.

To capture and tag 10 Pacific walrus per year by means of a "limpit" device. The permit holder may collect 12 skin samples per year from Pacific walrus which have been taken by Alaskan natives for subsistence purposes. Any walrus accidentally injured or killed may be salvaged. (Dr. G. Carleton Ray, Department of Pathobiology, John Hopkins University, Baltimore, Maryland.) Permit No. 9–23–C issued July 3, 1975.

To capture, hold, transport and release no more than 12 West Indian manatees to develop and implement tagging techniques. The permit holder may salvage and care for any manatees found dead or injured or accidentally killed or injured in course of study—Amendments to 9–25–C. (Howard W. Campbell, Gainesville Substation, Gainesville, Florida National Fish and Wildlife Laboratory.) Issued September 25, 1975.

An amendment was issued January 20, 1976. Authorized to collect blood and urine samples from 12 manatees. Authorized to tag with aerosol spray paint utilizing the technique of underwater application.

To take up to fifty (50) dead Florida manatees for the purpose of scientific research. (Daniel K. Odell, Division of Biology and Living Resources, School of Marine and Atmospheric Science, University of Miami.) Permit No. 2–88 issued May 25, 1976.

May capture up to 35 adult sea otters in Alaska, and up to 20 in California for: (a) weighing and sexing; (b) marking with human hair dye and/or flipper tags; (c) attaching telemetric equipment, and (d) taking blood samples. The permit holder may salvage and care for any sea otters found dead or injured, or killed or injured in course of study. (University of Minnesota, BioScience Center.) Permit No. 2–122 issued June 12, 1976.

To capture 4 female and 1 male sea otters at Pacific Coast off Monterey and Santa Cruz Counties, California; to transport to and hold at Sea World, for scientific studies and public display. The permit holder may salvage dead or injured sea otters; if dead, should be preserved to facilitate scientific research. (Sea World, Inc., San Diego, California.) Permit No. 9–24–C issued September 4, 1975.

PUBLIC DISPLAY PERMIT APPLICATION

May import through any designated port of entry two polar bear cubs from Calgary Zoo. (Louisville Zoological Garden—Robert B. Bean, Director, Louisville, Kentucky.) Permit No. 9–15–C issued August 27, 1975.

CERTIFICATES OF REGISTRATION

Section 18.23 of the regulations provides that marine mammals taken by an Indian, Aleut, or Eskimo for the purpose of creating and selling authentic native articles of handicraft and clothing may be transferred to a registered tannery, either directly by the Indian, Aleut, or Eskimo or through a registered agent. Similarly, marine mammals taken by Alaskan natives for subsistence may be sent to a registered tannery for processing and subsequent return to an Alaskan native.

Any tannery or person who wishes to act as an agent may apply for registration. The Service has processed the following applications for certificates of registration:

Roy Hendricks (RA–1), Anchorage, Alaska. The renewal of a certificate of registration to deal in walrus ivory was issued on January 9, 1976, effective through December 31, 1977.

Dennis R. Corrington (RA–3), Corrington's Alaskan Ivory Co., Anchorage, Alaska. The renewal of a certificate of registration to deal in walrus ivory was issued on January 20, 1976, effective through December 31, 1977.

Richard E. McGuirl (RA–5), Taxidermy, Anchorage, Alaska. Was denied a certificate of registration to receive and handle marine mammals (walrus,

polar bear, and sea otter). Denial was issued on July 21, 1975.

Martin James, Jr. (RA–6), Maruskiya's of Nome, Nome Alaska. The renewal of a certificate of registration to deal in walrus ivory was issued on February 23, 1976. This certificate was then amended to also authorize the registered agent to deal in polar bear hides. The amendment was issued on June 9, 1976. The certificate is effective through December 31, 1977.

Jack Wood (RA–8), Alaskan Custom Taxidermy, Anchorage, Alaska. A formerly issued certificate of registration to deal in polar bear hides was amended to clarify applicant's authority; the amendment was issued on July 10, 1975, and the certificate remains effective through December 31, 1977.

New Method Fur Dressing Company (RA–9), Renaldo Pepi, Owner, South San Francisco, California. Was issued a certificate of registration to receive, store, and ship polar bear hides. Effective from July 3, 1975, to December 31, 1977.

Jonas Brothers, Inc. (RA–11), Denver, Colorado, and Anchorage, Alaska. Was issued a certificate of registration to receive, store, process and ship polar bear, sea otter, and walrus hides. Effective from October 17, 1975, to August 31, 1978.

The Colorado Tanning and Fur Dressing Company (RA–12), Denver, Colorado. Was issued a certificate of registration to receive, store, process and ship polar bear, sea otter, and walrus hides. Effective from October 17, 1975, to August 31, 1978.

Arctic Trading Post (RA–13), Howard and Mary Knodel, Nome, Alaska. Was issued a certificate of registration to receive, store, cure, and sell walrus ivory. Effective from February 23, 1976, to December 31, 1977.

Teller Commercial Company (RA–14), Helen M. and Robert R. Blodgett, Teller, Alaska. Was issued a certificate of registration to deal in polar bear skins and/or walrus ivory. Effective from February 27, 1976, to December 31, 1977.

Alaskan Unorganized Borough School District (RA–15), George H. White, Superintendent, Nome, Alaska. Was issued a certificate of registration to deal in polar bear skins and/or walrus ivory. Effective from April 14, 1976, to December 31, 1977.

Chase Arctic Taxidermy (RA–16), Fred E. Chase, Owner, Fairbanks, Alaska. Was issued a certificate of registration to deal in polar bear hides. Effective from May 19, 1976, to December 31, 1977.

RESEARCH

The objectives of the Fish and Wildlife Service research program relating to studies of marine mammals are to actively carry out the Service's mandates of the Act; and to determine the ecological effects on marine wildlife of man's activities related to the development of energy resources.

In order to meet these objectives, considerable survey work, accumulation of information, and detailed analyses of population data remain to be accomplished. Review of worldwide marine mammal research literature and preparation of status reports continue to be important efforts in the overall research program. Research, conducted in-house, by contract, and by grants-in-aid, is summarized below:

In-house

1. Sea otter investigations: a. To determine the biology and management needs of the California sea otter.

b. To determine annual and seasonal distribution, abundance, and composition of populations of sea otters and other marine mammals in Prince William Sound, Alaska.

c. To determine the distribution and abundance of recently established sea otter populations.

2. Walrus investigations: a. To determine the biological activities of the Pacific walrus.

3. Polar bear investigations: a. To conduct satellite tracking of polar bears.

b. To determine parasites and environmental contaminants in polar bears.

c. To determine discreteness of populations of polar bears.

d. To develop a telemetry system for long range monitoring of movements and physiological parameters of polar bears.

e. To determine polar bear den ecology and distribution.

f. To determine biology and ecology of Alaska coastal polar bear populations.

g. To determine biology and ecology of polar bears of the Arctic Ocean.

h. To estimate Alaska polar bear population size and productivity.

i. To determine biological parameters of polar bears of the Chukchi Sea.

j. To conduct multivariate analysis of cranial measurement data of polar bears as part of the systematic study of polar bears.

4. Manatee and dugong investigations: a. To determine the effects of vegetation control programs on the Florida manatee.

b. To evaluate the biological consequences of manatee uses of sanctuaries and unprotected environments.

c. To develop manatee tagging and tracking technology.

d. To define manatee habitat requirements and assess habitat alterations.

e. To determine basic sensory and physiological parameters of manatees as related to technical needs.

f. To determine marine mammal capability with urbanization.

g. To survey the distribution, status, and conservation problems of the dugong.

h. To study and salvage standed manatees and other marine mammals.

i. To determine the distribution status of all taxa and populations of manatees.

5. Other Marine Mammals: To determine, in cooperation with NMFS, the status of the Hawaiian Monk Seal.

Contract

1. Status survey of the dugong. Investigator—Martini, F. ($2,650).

2. Environmental pollutants in marine mammals. Investigator—Brownell ($15,000). Collection and analysis of marine mammal tissues as indicators of pollutant levels in the ecosystem.

3. Development of radiotelemetry package for the polar bear. Investigator—Haugstadt ($12,000). Develop radio transmitter for attachment to polar bears in order to monitor their movements.

4. Ecological investigations of sea otter habitats in Prince William Sound, Alaska. Investigator—Daves and Moore ($29,500).

5. Survey of monk seal. Ship charter—Ship Nastel ("Easy Rider") ($22,483).

6. Nearshore studies of fish communities of Otter Island. Investigator—Fishery Research Institute, University of Washington ($14,527).

7. Development of satellite telemetry package for polar bears. Investigator—Handar ($52,144). To develop and produce 3 transmitters for use with Nimbus F.

GRANT-IN-AID

Five proposals were received for research grants from researchers outside the Fish and Wildlife Service. Two of these proposals were funded, one 1975 grant was extended in accordance with the original proposal and three were not funded. These proposals are summarized below:

1. *Age determination of the manatee.* (Daniel K. Odell, School of Marine and Atmospheric Science, University of Miami, Miami, Florida. Funded—$16,048.)

The manatee is listed as an endangered species throughout its range, yet little is known about its biology. In order to provide proper conservation and management measures, information must be obtained about the biology of the species, particularly population biology. This includes such parameters as longevity, age of sexual maturity, calving interval, and overall growth rates. However, a determination of the absolute age of the manatee is prerequisite to insure precision in the above parameters. This research seeks a technique for determining relative and absolute age of the manatee. Live animals will not be sacrificed; only stranded animals and museum specimens are used.

2. *Sea otter energetics.* Dr. Kenneth Norris, Coastal Marine Institute, University of California, Santa Cruz, California, $17,554, of which $5,400 is Fish and Wildlife Service the remainder is Marine Mammal Commission funds.

The impact of the sea otter on commercial fisheries has been an issue of controversy for a number of years, and is not completely understood. Specifically, food intake in terms of calories, nutrients, and utilization by animals in nature remains unknown. The proposed research attempts to discover what role availability of food items plays in the range and preference in otter feeding by analyzing the energetics of the sea otter, using a double labeled water technique.

3. *An Analysis of Polar Bear Predation of Ice Pinniped Populations of Alaska.* (Alaska Department of Fish and Game—$63,314) A cooperative study with Fish and Wildlife Service biologist to assess the impact of polar bear predation upon ice-inhabiting pinniped populations of the Bering, Chukchi and Beaufort Seas of Alaska.

4. *Preliminary Assessment of Atlantic Walrus Stock Size, Seasonal Distribution, and Exploitation along the West Coast of Greenland.* (Randall R. Reeves) To survey and summarize what is known about Atlantic walruses and their exploitation off West Greenland; and to determine the feasibility and methodology for further field studies in this area. Not funded.

5. *Recording and Acoustic Analysis of the Vocalizations of Trichechus manatus latirostris* (Harlan). (Dr. Stephen H. Feinstein, University of Florida) To study vocalizations of the manatee with the object of developing a warning system to reduce manatee boat collisions. Not funded.

6. *The Helminth Fauna of the Florida Manatee.* (Dr. Donald J. Forrester, University of Florida) To determine the baseline parasite load of manatees in order to determine their role in debilitation and/or death in wild animals. Not funded.

ENDANGERED SPECIES

In the FEDERAL REGISTER of December 16, 1975 (40 FR 58308–58312), the Fish and Wildlife Service proposed determining critical habitat for six species, including the Florida manatee. This measure was taken pursuant to Section 7 of the Endangered Species Act of 1973 which requires all Federal agencies to insure that their actions do not adversely affect the critical habitat of endangered and threatened species. The general areas proposed for the manatee, all in Florida, are: The Crystal River and its King's Bay headwaters; portions of the Little Manatee, Manatee, Myakka, and Peace Rivers, and Charlotte Harbor in west-central Florida; the Caloosahatchee River and associated coastal waters; waters off the coast of Collier and Monroe counties, including Whitewater Bay; the waterway formed by Card, Barnes, Blackwater, and Buttonwood Sounds; Biscayne Bay and adjoining waterways; Lake Worth; Loxachatchee River; the intracoastal waterway from Sewalls Point to Jupiter Inlet, and from the St. Marys River to State Highway AIA; the Indian and Banana Rivers; and the St. Johns River and certain associated waters. These areas are utilized by the largest concentrations of manatees in the United States and are the only areas that presently can be defined as having major dependent populations. A final rulemaking was expected in 1976.

A recovery team for the Florida manatee was appointed July 19, 1976.

On June 23, 1976, the Director, Fish and Wildlife Service signed a Cooperative Agreement with Florida pursuant to Section 6 of the Endangered Species Act of 1976. The Executive Director of the Department of Natural Resources and Director of Game and Fresh Water Fish Commission were both a signatory to the Cooperative Agreement. Florida may now request, through an application for Federal Assistance, a priority allocation portion of the 2 million dollars ($2,000,000) the Service has in Grant-in-Aid funds for FY 1976.

OUTER CONTINENTAL SHELF BASELINE STUDIES

Approximately $977,251 will be spent for marine mammal research in Alaska waters during FY 76 as part of the Interior Department's Outer Continental Shelf (OCS) baseline studies for offshore oil and gas development. The studies are funded by Interior's Bureau of Land Management (BLM). Interior's Fish and Wildlife Service (FWS) has been designated as coordinator for the marine mammal and sea bird portion of OCS baseline studies. In addition to serving in a continuing advisory capacity and participating directly in the baseline studies, the Service is also assisting Commerce's National Oceanic and Atmospheric Administration (NOAA) which is the principal program manager for all baseline studies in Alaska, with the continuing development of programs for the Beaufort Sea, Bering Sea, and the Gulf of Alaska.

The following is the listing of marine mammal projects now planned:

1. Analysis of Marine Mammal Remote Sensing Data; G Carlton Ray and Douglas Wartzok, the Johns Hopkins University. $12,000 in FY 76.

2. Baseline Characterization of Marine Mammals; Clifford H. Fiscus and Alton Y. Roppel, NMFS. $81,700 in FY 76.

3. Abundance and Seasonal Distribution of Marine Mammals in the Gulf of Alaska; Clifford H. Fiscus and George Y. Harry, NMFS. $56,600 in FY 76.

4. Resource Assessment: Abundance Seasonal Distribution of Bowhead and Bulukha Whales—Bering Sea; Clifford H. Fiscus and W. Bruce McAlister, NMFS. $38,310 in FY 76.

5. Abundance and Seasonal Distribution of Bowhead and Belukha Whales—Beaufort Sea, Northeastern Chukchi Sea; William M. Marquette and George Y. Harry, NMFS. $49,800 in FY 76.

6. Physiological Impact of Oil on Pinnipeds; R. L. Gentry and W. B. McAllister, NMFS. $91,507 in FY 76.

7. Morbidity and Mortality of Marine Mammals; Francis H. Fay, University of Alaska, $83,787 (obligated in FY 75).

8. Biology of the Harbor Seal—Phoca vitulina richardi; Kenneth W. Pitcher, ADF&G, $65,000 in FY 76.

9. The Natural History and Ecology of the Bearded Seal, Erignathus barbatus and the Ringed Seal, Phoca (pusa) hispida; John J. Burns ADF&G. $106,041 in FY 76.

10. An Aerial Census of Spotted Seals, Phoca vitulina largha; John J. Burns, ADF&G. $17,997 in FY 76.

11. Trophic Relationships Among Ice Inhabiting Phocid Seals; John J. Burns, ADF&G. $60,041 in FY 76.

12. Assessment of the Distribution and Abundance of Sea Otters Along Kenai Peninsula, Kamishak Bay and the Kodiak Archipelago; Karl Schneider, ADF&G. $11,075 in FY 76.

13. Distribution and Abundance of Sea Otters in Southwestern Bristol Bay; Karl Schneider, ADF&G. $9,980 in FY 76.

14. Population Assessment, Ecology and Trophic Relationships of Steller Sea Lions in the Gulf of Alaska; Karl Schneider and Kenneth Pitcher, ADF&G. $157,100 in FY 76.

15. The Relationships of Marine Mammal Distributions, Densities and Activities to Sea Ice Conditions; John J. Burns, Francis H. Fay and Lewis H. Shapiro, ADF&G. $109,569 in FY 76.

16. A Survey of Cetaceans of Prince William Sound and Adjacent Vicinity, their Numbers and Seasonal Movements; John D. Hall, $26,745.

INTERNATIONAL ACTIVITIES

The international marine mammal program is an integral part of the Service's overall program. The Service continues its efforts to achieve the objectives of the Marine Mammal Protection Act through international cooperation. The following details the principal thrust of the international program during this past year.

U.S.-U.S.S.R. MARINE MAMMAL PROJECT, ENVIRONMENTAL PROTECTION AGREEMENT

The international marine mammal project is to develop collaborative research on the biology, ecology, and population dynamics of marine mammals of mutual interest to both nations. This project will contribute toward sound management and conservation of these mammals.

A project meeting was held in Leningrad, U.S.S.R., on June 2–12, 1975. Principal accomplishments were: final agreement for coordinated aerial surveys of walrus and bowhead whales in the Bering and Chukchi Seas in the fall of 1975; final agreement for participation of at least two and possibly four U.S. scientists in the spring of 1976, walrus-ice seal cruise in the Bering Sea (final arrangements were concluded in January 1976, with three U.S. scientists participating in the ice edge studies aboard the Soviet vessel *Zagoriani* from mid-March to early May 1976), and agreement to hold the walrus-ice seal biology meeting in January 1976 in Moscow.

The special conference on Walrus and Ice Seal Biology convened by the U.S.-U.S.S.R. Marine Mammal Project was held in Moscow, U.S.S.R., January 12–20, 1976.

The Protocol summarized the direction of a long range research plan for walrus and ice seals. The Protocol calls for increased emphasis on studies at the community and ecosystem levels, evaluation of current aerial survey techniques, and development of joint studies in Alaska and the Chukotka region of Siberia. Special attention was drawn to the Bering Strait region as an important location for studying migratory species.

The need for a conservation convention on walrus and ice seals was discussed at length. The Soviets pointed out that national protective measures by by both nations during the past decade had reversed the declining population trends of walrus and ribbon seals and that the populations of all five species dealt with were either increasing or

already high and stable. The United States discussed the need for international management of these pinniped species, particularly in view of potential environmental degradation. The Soviets wanted additional time to consider the issues involved. Therefore, it was agreed that the question would be reconsidered at the next project meeting.

FOOD AND AGRICULTURE ORGANIZATION (FAO)

The Advisory Committee on Marine Resources Research (ACMRR) is a working part on marine mammals to examine available data on the status of all marine mammals. All four groups of experts—Group I (Large Whales), Group II (Small Cetaceans and Sirenians), Group III (Pinnipeds and Sea Otters), and Group IV (Ecological Aspects)—have met, and reports are in varying stages of completion. Reports of the first three groups will describe (1) the status of marine mammal populations and (2) research priorities in each of the three marine mammal groupings. Research priorities are designed to provide information needed for proper conservation of all species. Review of the status of marine mammal populations was conducted through specifically prepared scientific papers which are part of the reports of the first three groups.

The Scientific Consultation on the Conservation and Management of Marine Mammals and Their Environment to be held in Bergen, Norway August 31 to September 9, 1976, is the final step in ACMRR's responsibility to provide an objective report on status of marine mammals to FAO. The Consultation will be attended by a large number of scientists from around the world. These scientists will critically review and discuss the reports of Groups I, II, and III on status of all species. Other major discussions of the Consultation will involve consideration of the ecological relationships of marine mammals. Research proposals concerning marine mammals will be reviewed and assembled into a single worldwide program. The final report and recommendations of the Consultation will be published.

PART II—SPECIES STATUS REPORT

INTRODUCTION

Status reports have been prepared for the seven species which are the responsibility of the Secretary of the Interior under the terms of the Act. Information about each species is summarized under seven major headings. They are: distribution and migration; abundance and trends; general biology; ecological problems; allocation problems; regulations; and current research. A partial bibliography is listed at the end of this part.

The Act defines a marine mammal as "any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or (B) primarily inhabits the marine environment (such as polar bears); and for the purpose of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin."

SPECIES LIST

CARNIVORA

Ursidae: *Ursus maritimus* (Polar Bear).
Mustelidae: *Enhydra lutris* (Sea Otter): *Lontra felina* (Marine Otter).

PINNIPEDIA

Odobenidae: *Odobenus romarus divergens* (Pacific Walrus); *Odobenus romarus rosmarus* (Atlantic Walrus).

SIRENIA

Trichechidae: *Trichechus manatus* (West Indian Manatee); *Trichechus senegalensis* (African Manatee); *Trichechus inunguis* (Amazonian Manatee); *Dugong dugon* (Dugong).

POLAR BEAR

(*Ursus maritimus*)

Distribution and migration. Polar bears occur only in the northern hemisphere, nearly always in association with Arctic sea ice. Centers for six geographically isolated polar bear populations identified in the main polar basin are Wrangel Island-western Alaska, northern Alaska, northern Canada, Greenland, Spitsbergen-Franz Josef Land, and central Siberia. Separate populations also occur further south in Hudson Bay in Canada.

Bears are most abundant near the southern edge of the sea ice but do occur throughout most of the polar basin and have been recorded as far north as 88° N. latitude. They make extensive north-south movements related to the seasonal position of the southern edge of the ice. In winter, bears off Alaska commonly occur as far south as Bering Strait and occasionally reach St. Lawrence Island and even St. Matthew Island in the Bering Sea. In the summer, north of Alaska, the edge of the ice pack and bears commonly occur between 71° and 72° N. latitude. Pregnant females concentrate for winter denning and bearing young on large offshore Russian islands, northern Canadian islands, and certain of the Spitsbergen islands.

Abundance, trends, and harvest: Total world population estimates, which range from a low of 10,000 by the Soviets to a high of 20,000 by the Norwegians, are based on broad assumptions and should be considered as very general. Abundance of bears off the Alaska coast and the magnitude of sustained long-term harvests suggest that the 20,000 figure may be low.

During the 1930's, 1940's, and 1950's, Alaska Natives harvested about 120 bears annually. Trophy hunting with use of aircraft developed in the 1950's, and the average annual kill gradually increased to 250 for 1961–72. The number of bears reported per hour of flying by Alaska hunting guides did not show a trend during 1956–69, the period when guides provided reliable data. Sex composition for 1961–72 when 87 percent of the bears were taken with the use of aircraft was 70–80 percent males. Selective hunting with use of aircraft reduced the percentage of mature males in the population. A high percentage of females with young in the population indicated a healthy rate of reproduction however. Age composition of bears harvested west of Alaska during the aircraft hunting era did not show a trend. Age composition of bears harvested north of Alaska declined in 1970 and 1971 and then increased in 1972, reflecting high harvests in 1966 and 1967, followed by hunting restrictions and reductions in harvest after 1967. Approximate harvests after passage of the Marine Mammal Protection Act of 1972, which permits hunting only by Natives for subsistence or as a source of material for traditional articles of Native handicraft or clothing, were 7 in 1973, 50 in 1974, 60 in 1975, and 150–160 in 1976.

The higher harvest in 1976 is largely the result of heavy ice conditions making more bears available to Eskimos on St. Lawrence Island and in villages along the northeast coast.

Russians believe that polar bear populations in the Soviet Arctic declined during the first half of this century and have now stabilized since hunting was stopped in 1956 and harvests limited to 10–15 cubs per year for zoos. There is a 5-year moratorium by the Norwegian government on the hunting of bears in Spitsbergen, where formerly about 300 were taken each year. The annual harvest in Canada is about 600 and in Greenland is 125–150. Thus the annual world harvest is now about 900.

General biology. Polar bears other than family groups of females and young are solitary most of the year. During the breeding season in late March, April, and May, males actively seek out females by following their tracks on the sea ice. Bears are polygamous, and a male remains with a female a relatively short time and then seeks another female. Delayed implantation probably occurs.

Pregnant females seek out denning areas in October and November. Known denning concentration areas occur on Russian, Canadian, and Spitsbergen islands. Bears den along sections of the Greenland coast and the north Alaska cost. Some denning occurs on heavy pack ice north of Alaska. Bears most commonly den under banks along the coast or rivers, or on slopes where snow drifts. A denning female commonly forms a depression in the snow and then enlarges a denning chamber as snow drifts over her. Young, weighing less than a kilogram, are born in December. A litter of two is the most common, one is quite common, and three is rare. The female and cubs break out of the den in late March or early April when cubs weigh about 7 kilograms. They make short trips to and from the opened den for several days as the cubs become acclimated to outside temperatures. If the den is on land the family group then travels to the sea ice. In most sections of the Arctic, young remain with the mother until they are about 28 months old.

Age as which females produce their first litter ranges from 4 to 8 years. Some females breed again at about the time they separate from their young so can produce litters every third year. Other

females have longer intervals between litters. Males can first breed when 4 years old. Most bears do not live beyond 25 years. Mature females off the Alaskan coast weigh 200 to 300 kilograms and mature males 300 to 600 kilograms. Animals west of Alaska are larger than animals north of Alaska. Polar bears feed primarily on ringed seals and also on bearded, harp, and bladder nose seals. They occasionally eat carrion, including whale, walrus, and seal carcasses, and small mammals, birds, eggs, and vegetation when other food is not available. Approximately 60 percent of Alaskan bears harbor *Trichinella spiralis*, apparently obtained from eating seals and other marine mammals, garbage, and possibly carcasses of other bears. Polar bear liver is toxic if eaten because of high vitamin A content.

Ecological problems. Long term climatic trends probably have a major impact on bear populations. Warming trends restrict areas that are suitable for denning and feeding, and cooling trends favor expansion of populations. Ice movement, especially in the fall when females are seeking maternal den sites, may also affect populations. Females may be forced to bear young in locations less favorable for denning when ice providing access to favorable denning sites forms late in the season. Years of light snow, or wind conditions which prevent formation of deep snow drifts, may also affect denning success, both for polar bears and ringed seals, one of their principal foods. Because of this dependency on ringed seals, any ecological change affecting seals could also affect bears.

Human development, especially that associated with oil and gas extraction, poses the greatest immediate threat to polar bears. Oil exploration and drilling in denning areas could cause bears to den in less suitable areas. Oil spills from offshore drilling or transporting of oil through ice covered waters could reduce insulating value of bears' fur and adversely affect the food chain below them. Ice would hinder or prevent containing of a spill, and currents could distribute oil over large areas.

Recent studies indicate that a significant number of bears have traditionally denned and produced young along Alaska's north coast. Increased human activity will perhaps cause fewer bears to come ashore to den and therefore den in less favorable sea ice sites, or cause animals to desert land dens earlier than normal when cubs would be less able to survive. Areas where oil and gas development may be having an impact now or could impact in the future include Naval Petroleum Reserve No. 4, the Arctic National Wildlife Range, State coastal and nearshore oil and gas lease lands, Federal Outer Continental Shelf oil and gas lease lands, and lands eligible for selection under terms of the Alaska Native Claims Settlement Act. Thus there is potential for development along the entire north Alaska coast from Pt. Hope to the Canadian border. Mercury and low levels of DDT and PCB's have been found in tissue samples of all Alaskan bears checked for these contaminants.

Allocation problems. In the United States, the polar bear evokes varied and often emotional feelings about its management and use, ranging from complete protection, to limited harvest for subsistence, to maximum sustained harvest primarily by trophy hunters. At present, non-Native residents of the arctic coast believe they are being discriminated against because only Natives are allowed to hunt. New conflicts will arise as development proceeds in the arctic and causes more direct encounters between bears and people and more disturbance to bears during critical stages in their life history.

The U.S.S.R. believes that bear stocks off the Siberian coast have been reduced, and restricts taking to a few cubs for zoos. Until recent years, Norwegian sealers killed bears as predators, Spitsbergen trappers used baited set guns to obtain hides to sell, and trophy hunters took bears from Norwegian boats in the summer. The present feeling in Norway is that these uses should no longer be permitted. In Greenland the harvest is limited to Eskimos or long term residents primarily for subsistence and personal use of skins. The Canadian harvest has traditionally been by Eskimos for subsistence and to obtain skins for sale. Trophy hunting from the ground, although encouraged by managing agencies in part of Canada, has not developed to any great extent because Natives, who trophy hunters must employ as guides, can realize more profit from selling skins than from guiding.

Regulations. Past management practices in Alaska have included seasons, bag limits, a permit system, limit on the number of hunts individual guides could participate in, and protection for females with young and young. Two management areas were established, one to the west of Alaska and one to the north of Alaska. Residents were allowed to hunt bears at any time for food provided aircraft were not used. Hides and skulls of all bears taken had to be presented to the Alaska Department of Fish and Game within 30 days for examination, sealing, and removal of a tooth for age determination. The State of Alaska banned the use of aircraft for hunting polar bears after July 1, 1972, and lengthened the season to encourage sport hunting from the ground.

The Federal Marine Mammal Protection Act of 1972 transferred management authority for polar bears to the Federal government and limited the harvest to Alaskan coastal Eskimos for subsistence or for manufacture of traditional Native articles of clothing or handicraft. The Marine Mammal Act removed restrictions on harvest of females with young and their young by Natives. A request by the State of Alaska for return of management authority for polar bears and certain other marine mammals as provided for in the Marine Mammal Act is under review, part of which will be public hearings the summer of 1976. The management plan proposed by the State of Alaska would provide for both recreational and subsistence hunting. The open season for both types of hunting would extend from 1 January through 31 May. Hunting with use of aircraft would be specifically prohibited. The closed season during the summer would preclude use of boats. The bag limit for recreational hunting would be one bear every 4 years by permit only. Residents utilizing bears for food could take one bear each year without a permit. Young and females accompanied by young would be protected.

The U.S.S.R. has not allowed polar bear hunting since 1956. Norway stopped set gun and trophy hunting in 1971 and enacted a 5-year moratorium in 1973 on all harvesting because of a change of attitude in Norway and because studies indicated the bear population was smaller than previously believed. In Greenland only Eskimos or long term residents may take bears and must use traditional ground methods of hunting. In Canada, prior to 1968, Eskimos hunting from the ground took bears with few restrictions. Since then, harvests have been regulated by establishment of hunting districts with quotas. In certain districts, trophy hunters may purchase a permit to take a bear from its quota provided a Native resident is used as a guide. In November 1973 the five polar bear nations—Canada, Denmark, Norway, Russia, and United States—drafted an Agreement on Conservation of Polar Bears to allow bears to be taken only in areas where they have been taken by traditional means in the past, and to prohibit use of aircraft and large motorized vessels as an aid in taking. The agreement also calls for both national research and cooperative international research and management, especially on populations occurring on the high seas or within more than one national jurisdiction; provides protection for ecosystems of which polar bears are a part; by resolution seeks special protection from hunting for denning females, females with cubs, and cubs; and by resolution asks for an international system of hide identification to better control traffic in hides.

Current research effort. The governments of Canada, Denmark, Norway, Russia, and the United States are conducting intensive long term investigations. In most countries shorter term projects funded by universities and grants complement government programs. Research programs are coordinated internationally by the Polar Bear Specialist Group under the auspices of the International Union for the Conservation of Nature.

SEA OTTER

(*Enhydra lutris*)

Distribution and migration. Populations in waters of the United States are resident (the sea otter is not migratory) along the west coast of North America from central California north to Prince William Sound and westward along the Aleutian Chain to the Commander Islands, along the southern Kamchatka

Peninsula, and among the Kuril Islands. The sea otter seldom ranges offshore beyond the 30-fathom (180 feet) depth curve.

Abundance and trends. Since sea otters were completely protected early in the 20th century, they have increased and become reestablished in a substantial portion of their historic range. In the late 19th century sea otter populations had been reduced by the fur trade to a few hundred animals at widely scattered locations. In 1973 Alaska Department of Fish and Game published estimates of sea otters in each Game Management unit. The total of these estimates are 101,050 to 121,050 otters. From recent surveys the sea otter population in California was estimated to be about 1,600 to 1,800 animals and ranged from Ano Nuevo Island north of Santa Cruz to beyond Point Buchon on the south.

During the period 1965 to 1972 sea otters from Amchitka Island and Prince William Sound were translocated to Southeastern Alaska, British Columbia, Washington, Oregon, and the Pribilof Islands. Among translocated otters, young have been observed in Southeastern Alaska, British Columbia, Washington, and Oregon. Recent surveys of these areas indicate a thriving population of more than 500 animals north of Sitka in Southeast Alaska but the number at other sites remain low—from about 10 to 60 animals—and the success of translocation remains questionable.

General biology. The sea otter is the largest member of the family Mustelidae, reaching a length of 148 cm and a weight of 45.5 kg. It becomes sexually mature at about 4 years of age and bears a single young, weighing approximately 2.3 kg, about every 2 years. The pup nurses for 10 to 12 months, but during this period often takes solid food gathered by the mother. The mother is very attentive to her young. Most of the young are born during the summer, but births and mating may occur at any season. Breeding behavior is promiscuous; mating male and female remain together for as long as 3 days. The dense underfur is about 1 inch long; the guard hairs are about 0.25 inch longer. A healthy animal may accumulate considerable body fat but there is no layer of blubber. The sea otter is, therefore, dependent for insulation from cool (35° to 50° F) marine waters on the air blanket retained among the dense underfur fibers.

Mortality at Amchitka Island (the only area studied intensively) is greatest in winter and early spring. A dense population there depleted food organisms, and starvation occurred during stormy weather. Young animals accounted for 70 percent of the mortality. The remaining 30 percent were predominantly animals showing signs of old age. Most of the dead animals exhibited signs of starvation and enteritis. Internal parasites include Trematoda (4 spp.). Cestoda (2 spp.), Nematoda (1 sp.) and Acanthocephala (5 or possibly 6 spp.).

Ecological problems. Human activities which are changing the environment will no doubt affect sea otters. Oil pollution of waters occupied by sea otters probably would be fatal to them. Pesticide residues have been found in California sea otters but the effect is unknown.

Allocation problems. There is conflict over management of the sea otter population off the coast of California. Because sea otters reduce the abundance of prey species, some of which are desired by humans, commercial and sport users of these resources prefer that the abundance and range of sea otters be limited. Preservation groups would like sea otters reestablished throughout their historic range.

There is no commercial or subsistence harvest of sea otters at present.

Regulations. The sea otter is protected by the Marine Mammal Protection Act of 1972 (Pub. L. 92-522). In California it is listed as a completely protected animal.

Current research and funding. The U.S. Fish and Wildlife Service employs two full time biologists on sea otter studies. The States of Alaska and California no longer employ biologists full time on sea otter studies but do carry out censuses. The Owings Foundation, privately endowned, employs a full time sea otter naturalist. Additional research is supported by the Marine Mammal Commission.

Pacific Walrus

(Odobenus rosmarus divergens)

Distribution and migration. The entire population spends winters in the seasonal pack ice of the Bering Sea where they are distributed from eastern Bristol Bay to the area south and west of St. Lawrence Island. Traditionally walruses concentrate southwest of St. Lawrence Island and in central Bristol Bay although the exact distribution may vary upon the extent and quality of sea ice. The majority of breeding females apparently occur in the northwestern Bering Sea, although pregnant females have been observed in Bristol Bay.

The northward migration begins in April; the exact timing of migration probably is heavily dependent upon the pattern of sea ice recession which may vary greatly from year to year. At least 5,000 males presently remain on or near Round Island in northern Bristol Bay. This number has increased by 2,000 to 3,000 over the past several decades. During the southern migration, walruses frequently haul out to rest at Big Diomede and Punuk Islands, and along the Soviet coastline, until the pack ice becomes accessible. During the fall of 1975, biologists from the Soviet Union located 9 such coastal haulout areas between the north coast of Chukhotka and Cape Olyutorski.

Following the northward migration into the Arctic Ocean, walruses disperse along the ice edge from about Pt. Barrow west to the Kolyma River in the east Siberian Sea. Apparently the routes of migration and summer distribution vary considerably among years, depending upon seasonal ice conditions.

Abundance and trends. The Pacific walrus population has increased during the past several decades following a decline in abundance caused by overexploitation. The population may have numbered as few as 40,000 to 50,000 by about 1950. Aerial surveys of walruses were begun in 1960, the most recent survey being a coordinated effort between the United States and the Soviet Union. Over 96,000 walruses were counted at coastal hauling areas along the Soviet coastline and another 30,000 to 40,000 were estimated to occur along the ice edge west of the International Date Line. Another 75,000 were estimated to occur east of the Date Line. However these estimates, are at best, very crude.

The take of walruses by the Soviet Union in 1975 was 1,265 animals. The number killed or wounded but lost is not included. The harvest cannot exceed 2,000, the present annual quota. The hunter take of walruses in Alaska in 1975 presently is not available.

General biology. Only one group of pinnipeds, the elephant seals, is larger than the Pacific walrus. Adult males weigh an average of about 1,160 kg with a mean standard length of about 316 cm. Adult females weigh an average of about 900 kg with a mean standard length of 270 cm. From a sample of new born young the maximum weight was 77 kg and the maximum length 137 cm.

The first ovulation of females usually occurs between 5 and 8 years of age. Males become fertile at 7 to 8 years but are not physically mature until they are at least 10 years old. The walrus is polygamous, in what is apparently the main breeding area (southwest of St. Lawrence Island). The gestation period is about 15 months, including approximately a 3 month period of delayed implantation. The young are usually born in May, during the spring migration northward. The females and young are very gregarious; males are gregarious outside the breeding season. Walruses often attain ages of 30 years or more.

Walruses are not buoyant, and must rest on ice or land at fairly frequent intervals. However, by means of pharyngeal pouches that may be inflated, walruses are able to sleep while floating upright at sea for short periods of time.

Clams are the most important food species. The stomach of one adult male contained 50 pounds of *Mya truncata* siphons and 35 pounds of *Clinocarduim nuttalli* feet. Other food includes echinoderms, annelids, coelenterates, sepunculids, echiurods, priapulids, arthropods, and tunicates. Occasionally, adult males may eat the flesh of other pinnipeds or cetaceans. The walrus diet apears to be seasonally variable.

Internal parasites recorded from walruses include the following: Trematoda (3 spp.), Cestoda (3 spp.), Nematods (6 spp.), and Acanthocephala (4 spp.). All walruses except calves are infested with external parasites, including three species of sucking lice. A small percentage of adult male walruses become carnivorous

and feed on seal flesh. Probably it is this abnormal feeding behavior that accounts for trichinosis infection of from 1 to 10 percent of over 1,000 male walruses sampled from four arctic regions. Incidence of uterine cysts and other disease conditions is low, as far as is known, and such diseases and abnormalities appear to be unimportant.

Ecological problems. Petroleum will undoubtedly be exploited from the Bering Sea and Arctic Ocean. The effect of this activity on walruses or other requisite resources is unknown. The extensive benthic food resources of the walrus are not yet subject to human exploitation. Such human activities could be competitive with walruses. However, the relationship between walruses and the benthic community are virtually unknown. Also of concern is the harassment of walruses when they are hauled out in summer on the Walrus Island State Game Sanctuary (Togiak Bay), Bristol Bay. During summer of 1975 Alaska Department of Fish and Game maintained a protection agent at Round Island.

Allocation problems. Siberian and Alaskan natives kill 5,000 to 6,000 walruses annually for subsistence. None were taken during 1975 for display. Loss of walruses during hunting is about 40 to 50 percent.

Additional waste occurs in the utilization of the products of retrieved walruses. If ivory is the primary objective, utilization amounts to as little as 1 to 3 percent of the potential. When meat and hides are used, utilization is as high as 90 percent of the carcasses taken. During recent years, ivory hunting has become an increasingly important problem. Regulations: During 1975, management of Pacific walruses was returned to the State of Alaska. Current regulations restrict the take of females although this restriction was not in affect during the spring hunting season of 1975.

Current research. The U.S. Fish and Wildlife Service has an ongoing research program on Pacific walruses. Investigators from th University of Alaska and Johns Hopkins University are currently studying walruses under funded grants from several agencies. The Alaska Department of Fish and Game will maintain observers during the hunting seasons at coastal villages of Alaska to monitor the kill and to collect information on the population.

Atlantic Walrus

(*Odobenus rosmarus rosmarus*)

Distribution and migration. Walruses are circumpolar in distribution. In the north Atlantic area, a small population occurs along the east coast of Greenland, Spitsbergen-Franz Josef Land, and east to the Barents and Kara Seas. A larger, geographically isolated population, occurs in the eastern Canadian Arctic and western Greenland. Presently, walruses are rarely found along the coast of North America south of Labrador. Scattered groups are located in Angava Bay and on the southeast coast of Baffin Island. In Hudson Bay, the main population is found around Coats Island, southern Southhampton Island, and northern Foxe Basin. North of Baffin Island, walruses are scattered northeast from Kane Basin between Ellesmere Island and Greenland and west to Melville Island. Along the west coast of Greenland, the principal population is located in the Thule area. There is no evidence of extensive migration, except in the west Greenland area. This situation contrasts sharply with the strongly migratory Pacific walrus.

Abundance and trends. Only the status of the population around Southhampton Island is well known. This population was estimated by the Fisheries Research Board of Canada and the Canadian Wildlife Service to be about 3,000 animals in 1947. An aerial survey in 1961 indicated a similar status at that time. The population in Foxe Basin appears to be larger, although no reliable estimate is available. Little is known of the status of walruses in other areas of the eastern Canadian arctic. They are relatively inaccessible and remain unaffected from predation by man. In western Greenland, the population has apparently declined considerably since the early 1940's because of human encroachment and predation. Catches in this area have declined from around 600 per year to 19 in 1967. No subsequent data from this area are available. This decline was apparently the result of Norwegian hunting which was prohibited by law in 1952. The status of the population in the Thule area is less well understood, although hunting activities there apparently are not affecting adversely that population.

General biology. The Atlantic walrus is generally smaller than the Pacific subspecies. Calves average 122 cm and weigh about 67 kg at birth. Adult females have an average length of about 260 cm and an average weight of about 570 kg, while males attain an average length of 305 cm and an average weight of about 910 kg. Seldom do the tusk lengths exceed 36 cm for males and 25 cm for females. Adult males may be distinguished from females by cutaneous tubercles of the head and neck, a broader muzzle, and more powerful muscles of the neck and shoulders.

Reproductive biology of the Atlantic walrus is not well understood. During most of the year, herds of adult males are spatially segregated from the herds of adult females with calves and immatures. Females apparently reach sexual maturity at about 4 years and males at about 6 years, although neither may become reproductively active until several years later. The gestation period lasts about 15 months with births occuring over a two month period with a peak in mid-May.

Ecological problems. Disturbance to the benthic food resources may affect the Atlantic walrus although limiting resources and relationships between walruses and the benthic community are virtually unknown. The results of recent exploration for oil and gas indicate that greatly increased human activity associated with the development of this resource may occur in northeastern Hudson Bay. The effect of these activities on walruses or their requisite resources is unknown.

Allocation problems. In Canada the most sucesful hunting occurs in autumn from "Peterhead" boats in shallow bays along the coast where walruses are hauled out on land. Few wounded animals escape during these operations. Much hunting occurs from canoes and whaleboats amongst the loose ice in spring and summer. Losses are estimated to be as high as 30 percent during this time, and many wounded animals escape the hunters. Some of the meat is consumed by humans. Much of the meat, skin, guts, and blubber is used as dog food. An ivory trade is maintained with the Hudson's Bay Company and much is sold privately.

Regulations. Canada established regulations in 1928 which limited the killing of walruses to Eskimos for food and clothing. These regulations have since been amended several times, but have not been changed in their main intent. Walrus hunting regulations were established in Greenland in 1957. These limit hunting to Danish citizens resident in Greenland. From 1 June to 1 January all hunting of males in the West Ice is forbidden, and from 1 April to 1 January no females and calves may be taken in the same area. Hunting from land is also forbidden in certain areas at certain times.

Current research. No field studies of the Atlantic walrus have been carried out since 1961.

West Indian Manatee

(*Trichechus manatus*)

Distribution and migration. T. manatus inhabits rivers, estuaries, and coastal areas of the tropical and sub-tropical regions of the New World Atlantic (Fig. I). It is commonly found from northern Florida in the U.S. to the northern coast of Brazil, in South America. Manatees are seasonally present in Georgia, and rarely in South and North Carolina, with occasional stragglers historically reported as far north as Old Orchard, New Jersey (40°N.) (Fig. I), and as far south as Esprito Santo, Brazil (20°S.).

Within the U.S., the year-round range of *T. manatus* is largely confined to peninsular Florida, but varies seasonally (Fig. II), with most manatees grouped near sources of warm water during the winter. Along the west coast, they congregate in a series of populations located near Crystal River and adjacent rivers in Citrus County, in east Tampa Bay, in the Caloosahatchee River and along the extreme southwest coast from Naples to the Everglades National Park. On the east coast, large populations congregate at Merritt Island, in Lake Worth and in Port Everglades, while smaller groupings are found in the upper reaches and near

the mouth of the St. John's River, and at several points along the coast. One group of at least 50 manatees is essentially landlocked in the Miami canal system in southeast Florida. In one survey, 37% of the manatees were in salt water, while 45% were in brackish and 17% were in fresh water.

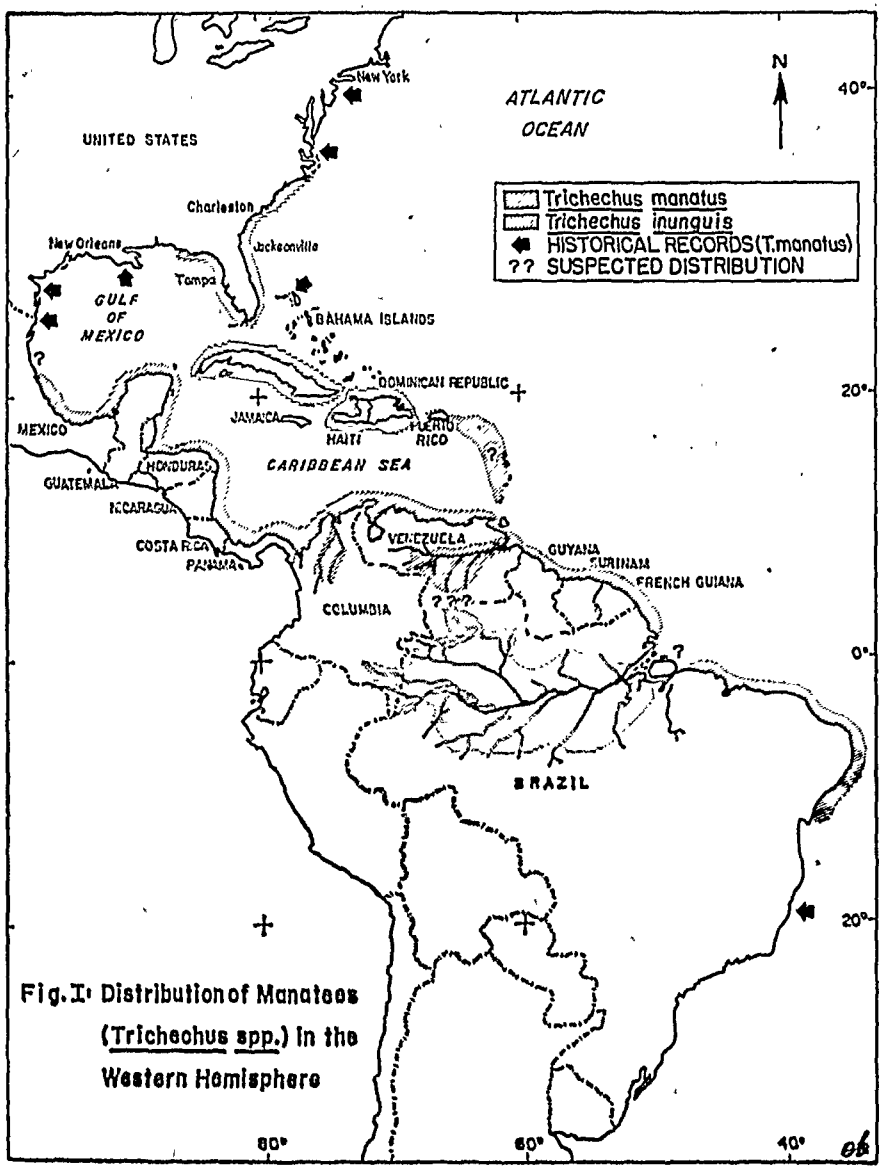

Fig. I: Distribution of Manatees (Trichechus spp.) in the Western Hemisphere

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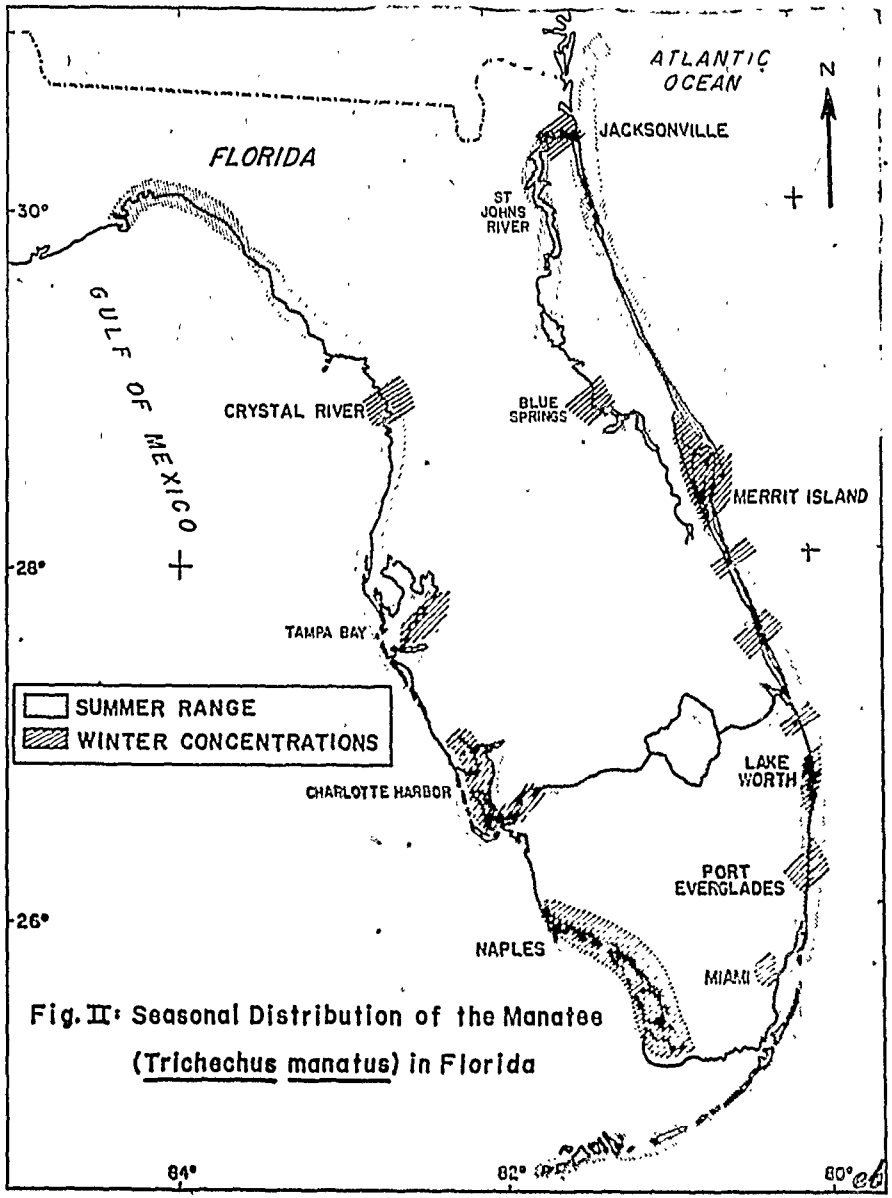

Fig. II: Seasonal Distribution of the Manatee (Trichechus manatus) in Florida

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Manatees in Florida apparently cannot withstand cold winter temperatures. Warm water springs or localities where factories discharge heated water into the rivers are the focus of most winter congregations. Except in extreme southwest Florida and the landlocked manatees in Miami, most manatees were within 5 km. of a warm water source during a 1976 cold weather aerial survey. There are more then twenty-five such warm water refugia used by manatees on the Atlantic and Gulf coasts. Arrival at these congregating sites usually begins in November; many animals remain nearby for the winter, but there is continuous movement and probably exchange of old and new members of the congregations during warm periods.

As the water warms with spring, the congregations disperse throughout Florida into most accessible water more than one meter deep. Some move north into Georgia and beyond, while others go west along the Florida Panhandle, generally no farther than the Aucilla and Port St. Joe Rivers, although single sightings from Pensacola, Florida and Lake Pontchartrain, Louisiana were reported in 1975–76. Summer observations of manatees at Northern Florida and south Georgia localities are common, whereas the animals are absent during the winter, thus strongly suggesting northernly movements in spring and a southward migration to avoid the cold in the fall. One manatee with large salt water barnacles arrived at Blue Spring, 170 km. up (south) the St. John's River in winter 1975. Offshore movements may also occur.

In Mexico, occasional manatees are thought to range along the Gulf Coast nearly to the U.S. border, but they are more commonly found south of Tamulipas or Veracruz, within the Bay of Campeche and on both sides of Yucatan Peninsula. Distribution appears to be continuous along the coast from Belize to Costa Rica, including Lake Isabella of Guatemala. Only isolated populations remain in Panama, and are located in Chiriqui Bay, the Chonquinola River, Gatun Lake, the Sicalo River, and possibly the Cocle River. Manatees may be found along the eastern coast of Colombia and in the Atrato, Leon, Suriqui, Meta Rivers and the Magdalena River and tributaries. *T. manatus* frequents the lower Orinoco drainage of Venezuela including its tributaries, the Apure, Arauca, Payara, Capanaparo, and the Claro, as well as Lake Maracibo. In Guyana and Surinam, manatees are found primarily in the rivers of the coastal plain. In Brazil, manatees range along the coast as far south as Mangue Seca (12° S.), but may not be continuous along the north coast due to unsuitable habitat.

Manatees are found throughout the Caribbean Sea, usually in small numbers, in coastal regions near rivers and away from population centers. They are distributed along both coasts of Cuba and are seen most frequently at the Hatiguanico River in the Zapata Swamp, and in the Ensenada de la Bara. In Jamaica, manatees are most frequently found in the Black River area in the southwest, and Portland Point area of the south central coast. The Dominican Republic distribution is nearly continuous along the north coast with concentrations occurring around Monte Criste, on the north side of the Samana Peninsula, on the south and eastern shores of Bahia de Samana, around the Tres Hermanas Springs area near the southeast tip of the island, and in the southwest from Azua to the Perdenales Peninsula. Nothing is known of manatees in Haiti, but at least some animals probably interchange with those from the Dominican Republic. Little is known of manatees in Puerto Rico, but isolated groups have been located on the south coast near Guanica, Guayanilla, La Parguerra, Jobas Bay and at Roosevelt Roads Naval Base on the east coast and Guanajibo on the west coast. One sighting has recently been reported from Trinidad.

Abundance and trends. Aerial surveys of Florida coasts and rivers during 1972–76 and interview data in 1975–76 indicate a manatee population numbering between perhaps 1,000 and 2,000. Over 740 manatees were counted in a concentrated aerial survey in late January 1976, but the percentage of the population not observed is not known. Numbers have been reported to be increasing along the west coast of Florida and similarly increasing or stable along the Atlantic coast.

Manatee numbers in Mexico are markedly reduced and reports are rare; however, their current local status appears to be stable. Likewise, populations in Belize seem to be decreased but stable. Manatees are reported to be fast decreasing at Guatemala, but are still present at least in Lago Isabela. Present status in Honduras is unknown, and estimates for Nicaragua range from a few score to several hundred. Numbers are believed to be low in Panama and Costa Rica.

Manatees are currently decreasing in many Colombian rivers and are extremely rare in the Santa Marta District and in the Llanos of eastern Colombia. They have been extirpated from Taganga Bay, the Canal de Dique, and the Cienaga de Guajaro. In Venezuela, manatees are considered neither abundant nor rare in the lower Orinoco Basin. Estimates of some thousands but not tens of thousands of manatees have been made for Guyana, but populations are reportedly reduced for both Guyana and Surinam.

In the Caribbean, manatees are uncommon to rare in most areas, and are thought to be declining in many locales.

It can be generally concluded that hunting pressures in the Caribbean, Mexico, Central and South America have resulted in the present diminished manatee populations. In most cases, hunting is now on a subsistence basis and little commercial exploitation occurs. Hunting efforts have decreased somewhat in many areas, partially due to the scarcity of manatees, permitting remaining populations to stabilize.

General biology. The West Indian Manatee is large, fusiform in shape, and thick-skinned with little hair. The forelimbs are modified paddles with rudimentary nails, and the spatulate tail is horizontally flattened. Adults range in size from 2.5 to over 4.5 m. in length and corresponding weights vary from 200 to 600 kg. However, average adults are between 3 and 4 m. in length and weigh less than 500 kg. Sexual dimorphism in size has not been documented.

Breeding occurs throughout the year. The cow is polyandrous, allowing several bulls to copulate with her during her relatively short period of receptivity. Mating has been observed in water about 2.5 m. in depth as well as in shallows less than 1 m. deep. Most calves are born between December–June, with a majority born in the spring. The gestation period is probably about 385 to 400 days and parturition is thought to occur in secluded shallows. Successful breeding has occurred under captive conditions only once but full documentation of the event is lacking. One is the usual number of young; however, twins and a case of foster parenthood have been recorded. Newborn calves usually measure over 1 m. in length and weigh between 11 and 27 kg. Suckling from the pectoral teats occurs underwater. Calves may begin grazing within weeks of birth, but nursing may continue for 1 or 2 years. Therefore, breeding probably occurs every 2.0 to 3 years.

Manatees have been classified into the following age groups: calves, any young animal associating with a cow; juvenile, independent but not yet sexually mature; and adults, animals taking part in reproduction. Transition to adulthood is gradual and sexual maturity may not be attained until 4 or possibly 6 years of age. Manatee longevity in the wild is unknown, but a captive has been successfully maintained in Florida for 24 years.

Preliminary studies of social behavior indicate that the most obvious close bond is between cow and calf. Estrus herds of bulls may last from one week to more than a month. Small herds of less than 5 animals are the most commonly encountered non-estrus groups except during cold winter periods when groups of as many as 140 animals are found in warm water refugia in Florida. Intragroup social interactions including "play" and nonspecific sexual behavior (including homosexual) are reported.

T. manatus is reported arythmical with no specific daily patterns of behavior. Adults may spend from 6 to 8 hours daily in feeding. Manatees are wholly herbivorous, consuming a variety of food plants in the following order of preference: (1) submerged plants, (2) surface floating vegetation, and (3) emergents. Quantities of incidentally ingested insect larvae, amphipods, mollusks, shrimp, and other invertebrates probably provide necessary amounts of protein for the manatee. Captive adults consume 30 to 50 kg. of

vegetation each day. It has been suggested that manatees must return to freshwater occasionally for drinking.

Internal parasites of *T. manatus* include two species of trematodes (*Opisthotrema* and *Chiorchis*) and one species of nematode (*Plicatolabia*). A single copepod (*Harpacticus*) was also reported on the skin. Manatees in saltwater become covered with marine diatoms (*Zygnema* and *Navicula*) and barnacles, whereas animals remaining in freshwater develop a coat of algae (*Lyngbya* and *Compsopogon*). Manatees appear to be susceptible to pneumonia and other bronchial disorders when exposed to unusually low temperatures. To date, there is no documentation of predation upon the manatee by any animals other than man, but attacks by alligators and giant squid in Florida have been reported. Sharks have also been suggested as likely predators.

Ecological problems. In the United States, wounds inflicted by motor boat propellers and keels pose a major problem and are the prime cause of known manatee mortality. Water contamination by industrial effluents is responsible for the destruction of proper manatee habitat and food supplies, but does not appear to directly affect the animals who often congregate near polluted outfalls in winter. In upper Tampa Bay, the natural submergent vegetation has been eradicated by this pollution, resulting in the absence of manatees in the upper bay. Dredging may also have detrimental effects, increasing the water turbidity to a point where submergent plants can no longer survive. Natant plants seem to thrive under these conditions, and in the absence of the preferred submergents, manatees do consume these natants. However, the floating plants present a problem to boat traffic and (as in the St. John's River) are sprayed with herbicides, such as 2–4–D, which is then directly ingested by manatees. No direct effects of this or other herbicides have been documented. Oil spills from offshore drilling may also have detrimental effects on the manatee's food supplies. Vandalism, poaching, accidental nettings, and flood control structures are additional threats to the manatee.

Blue Springs Park (a winter congregating site) has been designated a Manatee Sanctuary by the Florida Department of Natural Resources and is the only locality in Florida with lowered boat speed limits and swimming restrictions for manatee protection. As many as 25 manatees take refuge in this spring during cold periods. Manatees also inhabit the Everglades National Park and several National Wildlife Refuges, being especially abundant in the Merritt Island NWR. They are found within the Parque Nacional Isla de Salamanca of Colombia, and in Tortuguero National Park, Costa Rica, but their occurrence in other foreign reserves or sanctuaries is unknown.

Allocation problems. Manatees have long been hunted for their meat, hides, oil and ivory. Protective legislation is nearly complete. The meat is still sold occasionally in local markets of Colombia, Brazil, and Venezuela, but kills are usually the result of fortuitous encounter by natives or fishermen. *T. manatus* has been used with mixed success in small scale aquatic weed clearance projects in Guyana, Mexico, and Panama, but at this point, large-scale utilization of manatees for weed control does not seem feasible, for large numbers of animals are required. The manatee has also been suggested for domestication for meat in the distant future. Current decimated populations, plus a low reproductive rate, deem this project as unrealistic.

Regulation. Protective legislation for the manatee now exists in the following countries: U.S., Brazil, British Honduras, Costa Rica, Panama, Colombia, Venezuela, Guyana, Cuba, Jamaica, Puerto Rico, Trinidad, Haiti, Mexico and the Dominican Republic.

Current research. The National Fish and Wildlife Laboratory (NFWL) of the U.S. Department of the Interior has initiated a broad scope research program into the ecology and physiology of *T. manatus*. Survey efforts are being expanded in Florida and the southeastern United States and initiated throughout the Caribbean, Central America, and southern Brazil. Tracking studies of movements and seasonal habitat utilization were initiated in Fall 1975 in the southeastern United States. Suitable tagging techniques are also being developed. Detailed analysis of the environmental relationships of *T. manatus* in the Blue Springs Park has been initiated with the cooperation of the Florida Department of Natural Resources. Studies of basal metabolism and osmoregulation are underway, while programs to investigate sensory physiology are planned. Dr. D. Odell of the University of Miami Marine Laboratory is cooperating with the NFWL in studies of mortality factors and is conducting a study to develop a methodology for aging dead manatees. Cooperative program between the University of Florida School of Veterinary Medicine and the NFWL are studying manatee parasites (Dr. Donald J. Forrester), hematology (Dr. John W. Harvey), and fungal skin infections (Dr. Fred Neal). Dr. Kermit C. Bachman of the Dairy Sciences Department is working with the NFWL to study the components of manatee milk. An in depth study of manatees in Puerto Rico is projected for F.Y. '77–78, with at least prelliminary surveys scheduled for Panama, Belize, Costa Rica, Mexico and northern South America.

E. Mondolfi of Venezuela is compiling records of this species in his country to determine their local range and P. van Bree of Amsterdam is supervising a taxonomic study comparing *T. manatus* to *T. senegalensis*. The U.S. National Academy of Sciences, the National Research Council of Canada, and the National Science Research Council of Guyana are considering the joint establishment of an international manatee research center in Guyana. They hope to direct their research toward reproduction, physiology and nutrition of the West Indian Manatee.

African Manatee

(*Trichechus senegalensis*)

Distribution and migration. The African Manatee occurs in coastal waters and in adjacent rivers along the coast of West Africa from the mouth of the Senegal River (16°N) to the mouth of the Cuanza River to Angola (Fig. III). They have been reported from the Faleme, Gambia and Casamance Rivers of Senegal and Gambia, and from the coasts of Guinea. Other rivers known to support manatees are the Sierra Leone, the Missunado, the St. Paul's and the Cavalla Rivers. In Ghana, they are now apparently restricted to Lake Volta and the upper reaches of the Volta River. Manatees have been taken at Benin and Lagos, Nigeria, and are numerous in most of the larger rivers of southern Nigeria. They occur in the Niger River and are commonly known as far upriver as Idah, on the western border. They travel even further upriver, and have been noted in Segou, Mali, approximately 200 miles southwest of Timbuktu. Manatees also ascend the Benue River, a large tributary of the Niger. They have been reported in this waterway as far east as Numan (9°N 12°W). It is not thought that manatees occur in Lake Chad, although specimens have been collected from its principal tributaries, the Baningi, the Bahr Keeta and the River Shari. In Cameroon, they are found within the Korup Reserve and have been reported from the Mungo and Wouri Rivers. It is also likely that they inhabit the Campo River in southern Cameroon. Specimens have been taken from the Rio Muni, Gabon and Ogooue Rivers and may also be found in the Loeme River of Congo Brazzaville. In Zaire, *T. senegalensis* occurs in the lower Congo River, and also in the upper drainage of the Uele River, east to Kibali. The Loge, Dnade, Bengo, and Cuanza Rivers of Angola all reportedly contain manatees. No migrational movements have been noted for this species.

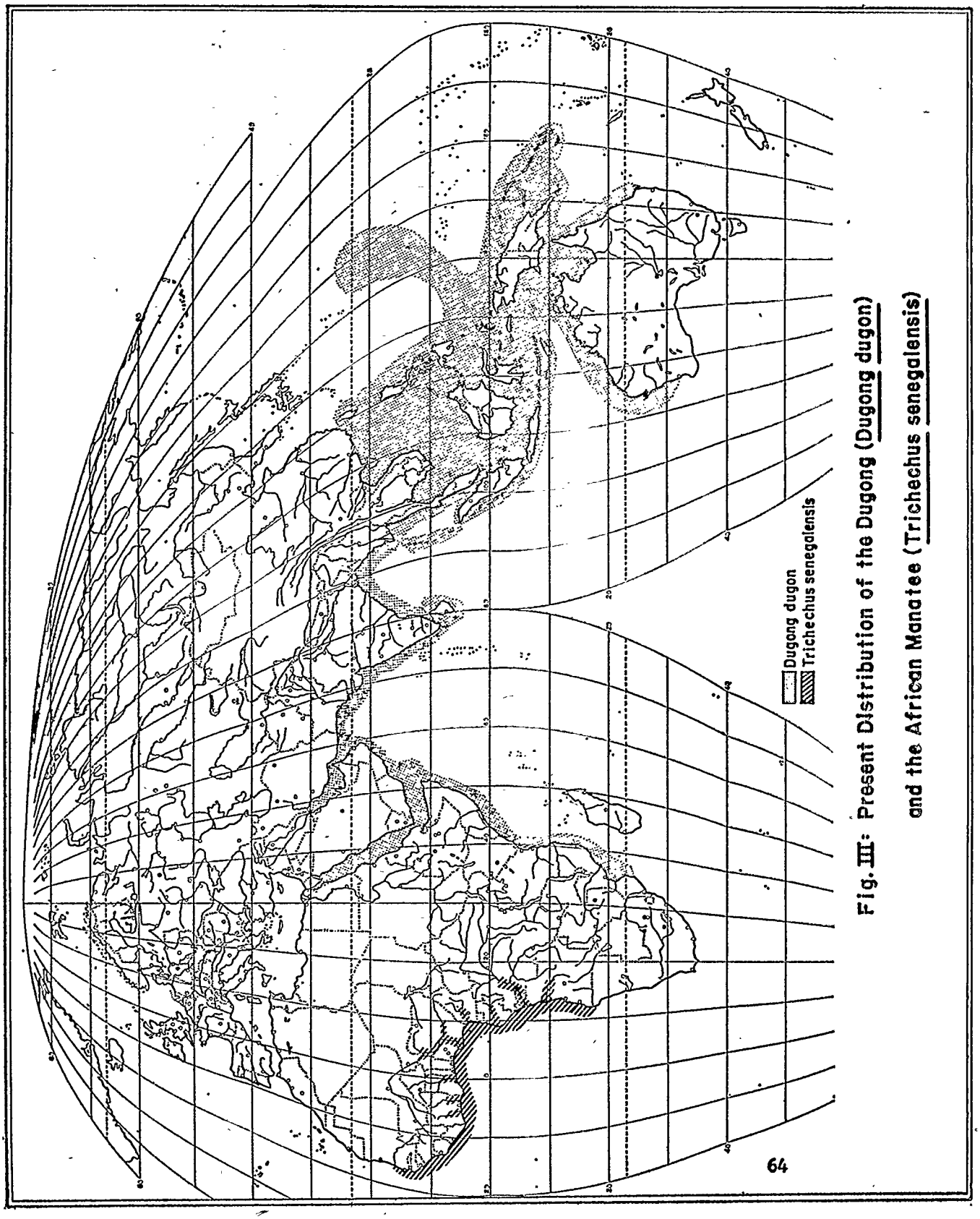

Fig. III: Present Distribution of the Dugong (Dugong dugon) and the African Manatee (Trichechus senegalensis)

Abundance and trends. No population estimates are available for this species. The African Manatee was reported as rare in the Senegal, Faleme and Casamance Rivers of Senegal as early as 1900. Recent reports of manatee abundance in Senegal, Guinea and Portugese Guinea are lacking. Mantees remain common enough in the Sierra Leone River estuaries today to be trapped for food, but no information is available on the current status of manatees along the coast from Liberia to Nigeria. Manatees have been extirpated from the Mekrou River of Dahomey and the portion of the Niger River on the Niger-Dahomey border, although they are thought to still be numerous in most of the larger rivers of southern Nigeria. Populations seem to be stable in the lower Niger, the Benue River, and the Anambra system of creeks, but manatees are rare in the Izichi River of Nigeria. *T. senegalensis* has apparently been extirpated in Lake Chad and is classified as rare in the Cameroons. The lower reaches of the Congo River reportedly support considerable numbers, but populations have diminished in the upper rivers. In general, the manatee population of Zaire is much reduced. *T. senegalensis* is classified as a vulnerable species, but little data is available on the recent distribution or abundance of this animal.

General biology. Externally, this manatee is indistinguishable from the West Indian Mantee. It is large, fusiform and nearly hairless, with paddle-like flippers and spatulate tail. Average adults measure from 2.5 to 3.4 m. in length and weigh from 400 to 500 kg. It has been hypothesized that breeding occurs during the late dry season in weedy swamps and lagoons, but documentation has not been provided. The gestation period is unknown but is probably about one year. One is the usual number of young. Newborn calves are approximately 1 m. in length, and they are believed to remain with the parent cow for a long period of time. There is no further information available on reproductive or population biology of this species. African Mantees favor weedy swamps and mirigots. They are believed to be active throughout the day, but feed mostly at night. Their diet includes mangrove leaves, *Cymodocea nodosa, Polygonum,* and *Eichornia crassipes,* but they have also been reported feeding on *Rhizophora,* a terrestrial plant which often hangs over water. A 1.85 m captive male consumed 12 kg. of vegetables daily. Upon reaching 2.4 m. in length, he regularly ate 17 to 18 kg. of vegetables, *Elodea,* and legumes daily. The only information available of the social behavior of *T. senegalensis* is that groups of four animals, including half-grown calves, have been observed.

The one internal parasite reported for the African Manatee is *Chiorchis fabaceus,* a trematode found in the large intestine. No diseases of this species have been reported from the wild, but one captive died as a result of acute enteritis. There is no evidence of predation on *T. senegalensis* by any species other than man.

Ecological problems. Propellers and keels of boats striking submerged manatees may inflict mortal wounds. While there has been no evidence presented indicating that this is a real problem in West Africa as it is in Florida, the Ijaw fishermen of the Anambra system of creeks in Nigeria considered manatees a nuisance to their boat traffic. In 1932, they began trapping and killing manatees, and within three years, managed to exterminate the local population. Killing of manatees for food is reported to have reduced this species in rivers in Ghana after water clarity improved following the construction of dams. These dams are also believed to have isolated populations and may disrupt normal migratory movements. Manatees inhabit the recently formed Lake Volta in Ghana and Lake Kainje in Nigeria, which are currently being swamped by growth of aquatic weeds. Use of herbicides on the weeds which are consumed by the manatees presents a potential threat to manatee. Pollution of waters in areas of human development would be expected to adversely affect the food sources of manatees. This species occurs within the Doro River Forest Reserve of Nigeria and in the proposed Korup and Campo Reserves of Cameroon.

Allocation problems. The African Manatee has long been hunted throughout its range, largely for its meat. Nets, harpoons and guns are used in taking manatees and the hunting is usually done at night. Manatee hunting has been a regular occupation in the lower Congo, Angola and in northern Nigeria. No estimates are available as to the current take. An additional problem is the accidental netting of manatees in shark nets. These are set along many coastal areas of West Africa. *T. senegalensis* has been considered as a potential solution to the problem of aquatic weed control in man-made lakes and river systems. Experiments carried out on the West Indian Manatee indicate that successful weed control by manatees is feasible under certain specialized circumstances. It is likely that the use of manatees in conjunction with the alternative mechanical weed removers, would provide the best means of control.

Regulations. The African Manatee is currently protected in Senegal, Guinea, Sierra Leone, Liberia, Ivory Coast, Ghana, Togo, Dahomey, Nigeria, Cameroon, Gabon, Congo Brazzaville, Zaire and Angola.

Current research. There are no current survey programs underway to determine the status and distribution of this species, but the National Fish and Wildlife Laboratory of the U.S. Department of the Interior considers this a critical area for research in F.Y. '77. Peter van Bree of Amsterdam is supervising a taxonomic study comparing *T. senegalensis* to *T. manatus.* The National Fish and Wildlife Laboratory of the U.S. Department of the Interior has compiled a report on the distribution, conservation and natural history of *T. senegalensis.*

AMAZONIAN MANATEE

(*Trichechus inunguis*)

Distribution and migration. The Amazonian Manatee is strictly fluviatile, apparently being confined to the Amazon Basin and possibly the Orinoco drainage. (Fig. 1). In Brazil, it occurs in the Amazon River and the following tributaries: the Rio Tocantins, the Rio Xingu, the Tapajos, the Nhamunca, the Rio Madeira and the Rio Negro. They have also been reported in the Rio Branco, which is almost continuous with the Essequibo and Rupununni Rivers of Guyana during flooding, thus allowing manatees access to these rivers. It is thought that *T. inunguis* also inhabits the upper Orinoco and the Cano Casiquiare of Venezuela, but records are lacking. In Colombia, Amazonian Manatees may be found in the Amazon, the Pupumayo River (west to the Araracuara rapids). They may also frequent the Apaporis River. Peruvian rivers supporting manatees are: the Rio Napo, the Rio Tigre, the Rio Maranon (as far as its confluence with the Rio Pastaza), the Rio Samiria and the Rio Pacaya. They also inhabit the Ucayli and Huallago River drainages, but are absent from both the Madre de Dios and the Purus systems. No information is available on migration of this species.

Abundance and trends. Amazonian Manatees were formerly abundant in the Brazilian Amazon. Thousands of skins were brought yearly to Manaus for trade in the 1930's and 1940's. *T. inunguis* is consequently less abundant today in most of the Amazon and its tribuatries. They are, however, still fairly common in some lakes on the lower Tapajos, and in the Nhamunca River. In general, this manatee is regarded as rare in Colombia. This species is nearer to extinction in Peru than any other mamal, although modest numbers do remain in the Rio Samiria and the Rio Pacaya. All reports indicate dramatic decline in numbers of Amazonian Manatees throughout their range. Population estimates are not available, but extinction has been predicted within the next few decades if local hunting pressures continue.

General biology. T. inunguis is a large, fusiform, nearly hairless marine mammal with paddlelike flippers and a spatulate tail. It is distinct from other manatee species (*T. manatus* and *T. senegalensis*) in both appearance and habitat. It is characteristically more slender in form with elongated flippers lacking nails, and it is marked by a unique white breast patch. This species is the only entirely fluvatile manatee. Adults may reach lengths of 2.8 m. and estimated weights are between 125 and 250 kg. Breeding apparently occurs throughout the year. The gestation period is thought to be about one year, and one is the usual number of young born. Newborn calves are less than one meter in length and weigh less than 20 kg. Further information on reproduction, ontogentic variation and population structure are lacking. Longevity in nature is unknown, but a captive pair survived for 12½ years before they died.

Amazonian Manatees feed upon a variety of aquatic vegetation including *Statiotes, Potamogeton, Vallisneria, Ceratophyllum, Ulva, Myriophyllum* and *Zostera.* Daily consumption of food plants has not been measured under natural conditions, but captive adults generally require 9 to 15 kg. of lettuce and vegetables daily. There is no documentation of any natural predation on T. inunguis, but jaguars, sharks, piranha and caiman have been suggested as likely predators. The trematode, *Chiorchis fabaceus,* occurring in the large intestine, is the only internal parasite reported for this species. Bronchial disorders, pneumonia and skin problems have been noted in captives, and one captive developed a case of osteomyelitis as a result of a harpoon wound.

Allocation problems. Many Indian tribes of Amazonia have hunted manatees in the past, both for meat and for the hides which were used in making shields. Harpoons and nets were used in capturing the animals, but the final killing was done by driving wooden plugs into nostrils causing suffocation. In the 1930's and 1940's, the Amazonian Manatee was commercially exploited for the skins, which were shipped to Portugal and Rio de Janeiro to be used primarily in the manufacture of machine belting and water hoses. A meat preparation called "mixira" consisting of meat boiled in its own fat, was canned and also shipped abroad. Thousands of manatees were slaughtered yearly. Protective legislation has since been enacted and the present rate of exploitation is reportedly reduced. However, poaching continues at a reduced rate and manatee meat is still occasionally available in Colombia and Brazil. In Leticia, Colombia, a large manatee today is worth about 40 Colombia pesos. The price has reportedly slumped in other areas.

Regulations. T. *inunguis* is totally protected in Brazil (1968), Venezuela (1970), Colombia (1969), Peru (1973) and Guyana (1961).

Current research. Diana Magor is the only individual currently studying T. *inunguis.* She is based in Manaus, Brazil, and is collecting data on growth, distribution, and the natural history of the Amazonian Manatee.

DUGONG

(*Dugong dugon*)

Distribution and migration. The dugong occurs in tropical and subtropical waters of the Indo-Pacific (Fig. III). It is totally marine and is usually found in near-shore coastal waters from two to three fathoms in depth. Along the east coast of Africa it ranges from Egypt in the Red Sea, south to Delagoa Bay (26° S), Mozambique. This distribution is discontinuous due to local extirpation in certain areas. Dugongs have been reported from the Persian Gulf and they also range along the west coast of India, south of the Gulf of Kutch. They occur in Ceylonese waters and are present in the Andaman Islands, the Mergui Archipelago, Burma, Malaysia, the Moluas and Sumatra. They may still be found in the Ryuyu Archipelago, and specimens have been taken in Formosa and Hong Kong. The present range extends south and east to include Guam, the Palau Islands, the Carolines, New Britain, New Guinea, the Solomons, New Caledonia and New Hebrides. In Australia, dugongs occur all along the northern coast from Perth (32° S), on the west coast, to Brisbane, in the east. They are absent from the Marshall, Gilbert, Ellice and Fiji Islands.

Long distance migrations are unknown for this species, but local, offshore movements are apparent. These correlated with the changing monsoon seasons and possibly with resulting shifts in abundance of food sources. During the season of rough seas and extreme winds, the animals move to shore, apparently seeking shelter. Such movements have been reported in east Africa, India, and the Phillipines (where they are no longer present). Similar migrations have not been noted in Australia.

Abundance and trends. Populations are thought to be much reduced and continuing to decline through much of the range, excepting Australia and Papua-New Guinea. Numerical estimates of dugongs are unavailable except for northeastern Australia. A population of 1,000–2,000 dugongs is estimated along the Queensland coast.

Dugongs are more abundant in Kenya and the Somali Republic than elsewhere along the coast of Africa. They are now extremely rare in the Red Sea and the Gulf of Aqaba. They were once abundant enough in the Gulf of Mannar (between Ceylon and India) to support a large commercial dugong fishery. The only remaining remnants of this population are restricted to the region near the Mannar Peninsula of Ceylon, from Jaffna to Puttalam. Numbers have declined along the Sarawak coast of Malaysia, and few dugongs can be found today in the Ryuyu Archipelago. The only stable populations occur along the northern Australia coast, Shark Bay, Broome, the Gulf of Carpentaria, the northern coast of Queensland, and along the coast of Papua-New Guinea. These stocks appear to be maintaining themselves and may even be increasing. At present, dugongs occur only in Lamu Park in Kenya.

General biology. Dugongs are large fusiform marine mammals with flipperlike forelimbs and a broadly notched, horizontal tail fluke. Adults range from 2.4 to 2.7 m. in length and corresponding weights are 230 to 360 kg. The thick, nearly hairless skin is deep slate to brown in color and is frequently marked with numerous scars and scratches. Dugongs were quite social in the past, occurring in large herds of several hundred animals. Today, groups of one to six animals are the usual number, although groups of up to fifty animals are still seen along the coast of Australia. Breeding apparently occurs throughout the year. The gestation period is thought to be about one year and one is the usual number born. Twins have been rarely reported. Newborn calves are about 1.1 m. in length. Calves begin grazing within the first three months after birth, but continue to nurse for over a year, reaching a length of up to 1.8 m. Sexual maturity is attained when animals reach approximate length of up to 2.4 m. (estimated five to ten years of age). Sexual dimorphism in size of adults is not evident. Longevity of the dugong in the wild is unknown, but analysis to tooth growth layer suggests a maximum age of thirty to sixty years, depending on whether growth rings are annual or biannual. A pair of captives were successfully maintained for ten years.

Dugongs are largely herbivorous and rely primarily upon marine sea grasses of the families Potamogetonaceae and Hydrocharitaceae, occurring in upper subtidal and lower intertidal waters which range from 21° to 38° C. throughout the year. *Diplanthera* and *Cymodocea* are the most heavily utilized genera. Brown algae (Sargassum) may also be consumed in significant amounts when sea grasses are locally in short supply. Dugongs reportedly prefer to feed at night or with the rising tide.

There are few observations of predation upon the dugong by animals other than man. Fishermen have claimed the shark is a predator, but in over 100 dugongs netted and drowned in Queensland, none ever showed any sign of attack by sharks or any other predators. Large saltwater crocodiles are known to eat dugongs on occasion but the extent of this predation is unknown.

Internal parasites include Termatoda (10 spp.) and Nematoda (2 spp.). Barnacles and green filamentous algae have been observed on dugongs but do not appear harmful. No diseases have been reported.

Allocation problems: Man is the major threat to the dugong's existence. Boat traffic in offshore areas may inflict mortal wounds. Increased marine fishery activities in the India-Ceylon area have resulted in accidental nettings, drowning substantial numbers of dugongs. Dynamiting for fish is also assumed to affect dugongs adversely. In Queensland, Australia, a shark netting program has resulted in large dugong mortality; similar netting programs exist in Africa.

Dugongs have been hunted throughout their range. Their meat is similar to veal or pork, and "keeps" for long periods of time. Average sized adults yield from five to eight gallons of oil similar to cod liver oil, and the hide makes excellent leather, especially suitable for sandalmaking. Tusks and bones are used as ivory and several body parts were once thought to have medicinal or aphrodisiac properties. Today, hunting pressures are much reduced, in part due to the decline of dugongs. In spite of legislative protection, however, poaching continues. In Australia, the aborigines and Torres Islanders may still legally hunt the animals. One village (250 people) caught an average of about 70 animals per year during the early 1960's. In Papua-New Guinea at least one animal a week is killed for local consumption along the southwestern coast.

Regulations. The dugong is totally protected in Egypt, Anglo-Egyptian Sudan, Ethiopia, Somalia, Kenya, Tanzania, Mozambique, Madagascar, South Africa, Natal, India, Ceylon, Sabah, Sarawak, the Philippines, Japan, Formosa and New Caledonia; in Australia and Papua New Guinea, only aborigines and natives may hunt the dugong and they only for local consumption and use. While protection is near complete, effective enforcement is virtually impossible in most areas.

Current research. George Heinshon is continuing his study of dugongs in Townsville, Queensland. Animals accidentally drowned in shark nets are providing population and reproduction data, as well as information on food habits. Studies of nutrition, general ecology and behavior, and histology are also being conducted. Robert Kater and Adrian Hillier are also reportedly studying dugongs in Kenya, but the nature of their investigations is unknown. The National Fish and Wildlife Laboratory of the U.S. Department of the Interior has assembled a report on the distribution, status, and natural history of this species and recently conducted surveys along the north Australia coast, in Papua-New Guinea and in Kenya. Surveys are underway to determine dugong distribution in many areas of the Pacific where data are lacking and tagging and tracking studies to determine movements and migratory habits are planned for F.Y. 1977–78.

MARINE OTTER

(Lontra felina)

Local common names. Gato marino, chungungo, hulaque, nutria de mar, and chinchimen.

Taxonomy. Two subspecies of the marine otter are recognized; *L. f. felina* from southern Chile is slightly darker brown on the ventral surface when compared to *L. f. peruviensis* from northern Chile and Peru. Sufficent specimens are not currently available to permit detailed studies on the validity of these subspecies.

Distribution and migration. This species inhabits the coastal waters along the west coast of South America from central Peru (north at least to 12°S) south to Cape Horn, Chile. Nothing is known about its seasonal movements. It occurs mainly in the littoral region, but it is also known to ascend rivers to at least 650 meters above sea level.

Abundance and trends. Darwin found this otter abundant in the Chonos Archipelago and among the islands off the southwestern shores of Tierra del Fuego. It has been greatly diminished in numbers since Darwin's time, but in 1923 the Chicago Field Museum expedition found it to be common along the southern end of Chiloe Island, Chile. Nothing is known about numbers of the marine otter along the northern coast of Chile, but in Peruvian waters the population is estimated to be between 200 to 300. In the Cape Horn and southern Tierra del Fuego region this species has been practicially exterminated. One specimen was collected at Wollaston Islands, Tierra del Fuego about 25 years ago.

General biology. The following external measurements have been recorded for the marine otter: head and body 570 to 787 mm; tail, 300 to 362 mm; and total length, 910 to 1149 mm. An adult male taken at the southern end of Chiloe Island weighed 9 pounds. The fresh water prawn, *Criphiops caementarius,* is included in the diet of the species. Darwin reported that this otter feeds also on fish, "small red crab", "cuttle-fish", and the inhabitants of "volute shells". Sexual dimorphism was not detected in a small sample of this species. All species of *Lontra* except *L. provocax* and *L. felina* are allopatric (occupying different geographic areas), and all except *L. felina,* a littoral marine species, are probably ecological equivalents. *Lontra felina* is the smallest and the most distinct species in the genus and, according to one investigator, "probably evolved from a stream-dwelling species that adapted to a marine environment after isolation in coastal habitats as a consequence of progressive aridity in middle latitudes of South America's west coast."

Parasites and diseases. Nothing is known about parasites or diseases in this species.

Allocation problems. In Peruvian waters these otters are often shot by fishermen because of the alleged damage they do to the stocks of freshwater prawns. In Chile the species is hunted regularly by fishermen for their skins, especially south of Isla Chiloe.

Ecological problems. No specimens have been examined for pesticide residues or heavy metal contaminants.

Regulations. This species is listed as endangered in the Red Data Book of the International Union for the Conservation of Nature, but *L. felina* is not listed in the U.S. Endangered Species Act of 1973, which prohibits the importation into the United States species listed except for scientific, education or propagation purposes. The Marine Mammal Protion Act of 1972 assumed management authority for all marine mammals, but the marine otter for some reason was not listed under the jurisdiction of the Act. In Peru, the marine otter has been found in three areas being considered as a coastal park, but it is not known if the species is local enough in habits to remain in any one of these areas throughout the year.

Current research and funding of marine otter studies. Contracts are being established by U.S. Fish and Wildlife Service in Peru and Chile. Carlos Cabello of the Corporacion Nacional Forestal, Chile, is studying marine otters around Isla de Chiloe, Chile.

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PART III. APPENDICES

Appendix A—Decision to Waiver of Moratorium and Return Management of Walrus to the State of Alaska: FEDERAL REGISTER reference, 40 FR 59159.
Appendix B—Subpart F Approval of Alaskan Laws and Regulations: FEDERAL REGISTER reference, 40 FR 59442.
Appendix C—Procedural Regulation for Hearings: FEDERAL REGISTER reference, 41 FR 5396.
Appendix D—Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species: FEDERAL REGISTER reference, 41 FR 14372.
Appendix E—Proposed Waiver of Moratorium on the Polar Bear, Sea Otter and Pacific Walrus: FEDERAL REGISTER reference, 41 FR 15166.
Appendix F—Revised Notice of (I) Public Hearings and (II) Prehearing Order; Revised Notice of Public Hearings: FEDERAL REGISTER reference, 41 FR 21833.

[FR Doc.76-37690 Filed 12-28-76;8:45 am]

INTERNATIONAL TRADE COMMISSION

[332-80]

PROBABLE ECONOMIC EFFECT OF THE PROVISIONS OF H.R. 14600 AND THE NEED TO PROTECT A DOMESTIC INDUSTRY

Rescheduling of Public Hearing

Notice is hereby given that the United States International Trade Commission's public hearing in connection with investigation No. 332-80 will be held in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street, NW., Washington, D.C., beginning at 10 a.m., e.s.t. on March 15, 1977.

Requests for appearances at the hearing should be received in writing by the Secretary of the Commission at his office in the United States International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, not later than noon, March 10, 1977.

This notice revokes the date of the subject public hearing as announced in the Notice of Rescheduling of Public Hearing issued on December 2, 1976, and published in the FEDERAL REGISTER on December 7, 1976 (41 FR 53549).

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued: December 22, 1976.

[FR Doc.76-38101 Filed 12-28-76;8:45 am]

NOTICE OF MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on December 28, 1976, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Agenda for future meetings;
2. Minutes of the hearings and meetings of December 14, 16, and 20, 1976;
3. Reorganization;
4. Footwear (Inv. TA-201-18)—vote on remedy, if necessary;
5. Quarterly report on East-West Trade—draft to be distributed; and
6. Work plans for FY 77 and FY 78 budget estimates—see memorandum dated December 8, 1976, from the Chief, Financial Management.

A majority of the entire membership of the Commission determined by recorded vote that Commission business requires that the meeting of December 28, 1976, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the December 28, 1976, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

By order of the Commission:

Issued: December 23, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-38156 Filed 12-28-76;8:45 am]

MEETING

Addition to Agenda

At its meeting of December 23, 1976, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with proposed 19 C.F.R. 201.38, voted to add the following item to its agenda for the meeting of December 23, 1976:

11. GSP (Invs. TA-503(a)-3 and 332-81)—approval of notice deleting citrus fruit items and establishing time and place of public hearing on January 4, 1977, in Houston, Texas.

Commissioners Minchew, Parker, Leonard, Moore, and Ablondi voted by unanimous consent, that Commission business requires the change in subject matter by addition of the agenda item, affirmed that no earlier announcement of the addition to this agenda was possible, and directed the issuance of this notice at the earliest practicable time. (Commissioner Bedell was not present for the vote.)

By order of the Commission:

Issued: December 23, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-38155 Filed 12-28-76;8:45 am]

MEETING

Additions to Agenda

At its meeting of December 23, 1976, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with proposed 19 C.F.R. 201.38, voted to add the following items to its agenda for the meeting of December 30, 1976:

4. Draft letter from the Special Trade Representative for Negotiations re section 203 (i) (2) investigation on "bearing" steel;

5. Proposed request from the President for an investigation of tariff classification of textiles.

Commissioners Minchew, Parker, Leonard, Moore, and Ablondi voted by unanimous consent, that Commission business requires the change in subject matter by addition of these agenda items, affirmed that no earlier announcement of the addition to this agenda was possible, and directed the issuance of this notice at the earliest practicable time. (Commissioner Bedell was not present for the vote.)

By order of the Commission:

Issued: December 23, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-38157 Filed 12-28-76;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

IMPORTATION OF CONTROLLED SUBSTANCES

Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 19, 1976, Philadelphia Seed Co., Chemical & Gravers Roads, Plymouth Meeting, Pa. 19462, made application to the Drug Enforcement Administration to be registered as an importer of marihuana, a basic class of controlled substance in Schedule 1, for the importation of seed only, to be rendered non-viable for use in feed.

As to the basic class of controlled substance listed above for which applications for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefor, may file written comments on or objection to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than January 27, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, N.W., Washington, D.C. 20537.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: December 17, 1976.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.76-38154 Filed 12-28-76;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[76-117]

SPACE PROGRAM ADVISORY COUNCIL (SPAC), LIFE SCIENCES COMMITTEE

Meeting

The SPAC Life Sciences Committee will meet on February 9-10, 1977, at the Lyndon B. Johnson Space Center, Houston, Texas 77058. The meeting will be held in Room 966 of Building One. Members of the public will be admitted on a first come first served basis, up to the seating capacity of the room, which is about 60 persons.

The SPAC Life Sciences Committee serves in an advisory capacity only. In this capacity, it is concerned with man in relation to space travel and habitation, with exobiology, with other life forms, and including: physiology, behavior, clinical aerospace medicine, microbiology, radiobiology, biochemistry, nutrition and food technology, biology of gravity and rhythms, and biotechnology. The current Chairman is Dr. G. Donald Whedon. There are 18 members.

The following list sets forth the approved agenda and schedule for the February 9-10, 1977 meeting of the Life Sciences Committee. For further information, please contact Dr. Walton L. Jones: Area Code 202-755-2206, NASA Headquarters, Washington, DC 20546.

FEBRUARY 9, 1977

Time	*Topic*
0330-0900	Administrative. (Purpose: Subjects being discussed will include topics such as final approval of previous committee minutes and action items from the previous meeting of the parent organization, Space Program Advisory Council.)
0900-1030	Life Sciences Five-Year Plan, Budget and New Start Items. (Purpose: To apprise the Life Sciences Committee of the long term program plans and more immediate budget and new start propositions and to solicit comments and advice of Life Sciences Committee members.)

Time	Topic
1030–1100	Viking Results. (Purpose: To brief the LSC on the findings and significance of the biological and related experiments of Viking I and II subsequent to those reported at the LSC meeting of November 3, 1976.)
1100–1200	Planetary Quarantine Program Review Subcommittee Report. (Purpose: To report on subcommittee's findings at a review meeting at Jet Propulsion Laboratory and to solicit comments and advice of the full LSC.)
1300–1430	Update of Study in Human Factors and Aviation Safety. (Purpose: To apprise the LSC of the studies and results since the previous briefing and to solicit comments and advice of the members.)
1430–1600	Pharmacological Studies in Vestibular Program. (Purpose: To brief the LSC on the research and space flight experience of drugs used for the space motion sickness syndrome, as well as studies planned and to solicit comments and advice of the LSC members.)
1600–1630	Discussion. (Purpose: To formulate positions on issued discussed during the day.)
1630–1730	System Mission Development Test III (SMD III) Briefing and Tour. (Purpose: To provide LSC members with the opportunity to visit and examine the Spacelab Payload development and test facility used to develop experiments integration and data handling requirements, etc.)
	FEBRUARY 10, 1977
0830–0930	View Shuttle Extravehicular Mobility Unit (EMU) and Rescue Ball in Test Conditions. (Purpose: To demonstrate for the LSC the prototype test articles, EMU, and Rescue Ball for the Space Shuttle.)
0930–1030	Biocidal Water Treatment Research and Development of Waste Sampling Technology. (Purpose: To brief the LSC on this research and development effort and to solicit comments and advice of the LSC members.)
1030–1130	Progress on Calcium/Muscle Problem—Bed Rest Studies. (Purpose: To apprise the LSC of the progress of the calcium/muscle problem in flight, the results of the analogue studies using bed rest and to solicit comments and advice of the LSC members.
1130–1200	Status of the first Spacelab mission (SL–1) Life Sciences Experiments. (Purpose: To apprise the LSC of the current status of the SL–1 Life Sciences Experiments.)
1200–1230	Discussion. (Purpose: To formulate the position on issues discussed during the meeting.)

December 21, 1976.

JOHN M. COULTER,
Acting Assistant Administrator for DOD and Interagency Affairs National Aeronautics and Space Administration.

[FR Doc.76-38126 Filed 12-28-76;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

MEETINGS

The National Commission on Electronic Fund Transfers will hold consecutive meetings of its committees on January 11–13, 1977 at the Sawgrass, Ponte Vedra Beach, Florida, beginning at 9:30 a.m. each day. The Users Committee will meet on Tuesday, January 11, the Suppliers Committee will meet on Wednesday, January 12, and the Regulatory Issues Committee will meet on Thursday, January 13. The Providers will meet at the same location on Friday, January 14 at 9:30 a.m. Each of the meetings will discuss the Commission's February report.

The meetings are open to the public on a first-call basis to the extent that space permits. Any person interested in attending should first call Ms. Janet Miller at (202) 254–7400 to check on the availability of space.

Dated: December 23, 1976.

WILLIAM B. WIDNALL,
Chairman.

[FR Doc.76-38225 Filed 12-28-76;8:45 am]

MEETINGS

The National Commission on Electronic Fund Transfers will hold consecutive meetings of its committees on January 3 and 4, 1977, at the Federal Reserve Martin Annex Building, Dining Room E, Washington, D.C., beginning at 9:00 a.m. each day. On January 3, the Regulatory Issues Committee will meet at 9:00 a.m. and the Providers Committee will meet at 1:00 p.m. On January 4, the Users Committee will meet at 9:00 a.m., the Supplier's Committee will meet at 11:00 a.m., and the Steering Committee will meet at 2:30 p.m. Each of these meetings will discuss the Commission's February report.

The meetings are open to the public on a first call basis to the extent that space permits. Any person interested in attending should first call Ms. Janet Miller at (202) 254–7400 to check on the availability of space.

Dated: December 23, 1976.

WILLIAM B. WIDNALL,
Chairman.

[FR Doc.76-38224 Filed 12-28-76;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

MUSEUM ADVISORY PANEL

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Museum Advisory Panel to the National Council on the Arts will be held on January 12–13, 1977, from 9:30 a.m. to 4:00 p.m., at the Museum of Fine Arts, 1001 Bissonnet, Houston, Texas.

A portion of this meeting will be open to the public on January 13, 1977, from 9:30 a.m. to 4:00 p.m., on a space available basis. The agenda will include a review of Museum Program and current policy developments.

The remaining sessions of this meeting, on January 12, 1977, from 9:30 a.m. to 4:00 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of June 16, 1975, these sessions, which involve matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b) (4), (5), and (6)) will not be open to the public.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6377.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.76-38171 Filed 12-28-76;8:45 am]

PUBLIC MEDIA ADVISORY PANEL

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a closed meeting of the Public Media Advisory Panel to the National Council on the Arts will be held on January 14–15, 1977, from 9:00 a.m. to 5:00 p.m., in Room 1215, Columbia Plaza Building, 2401 E Street, NW, Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of June 16, 1975, this meeting, which involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b) (4), (5), and (6)) will not be open to the public.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6377.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.76-38172 Filed 12-28-76;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 76-53]

CORRESPONDENCE RELATING TO SAFETY RECOMMENDATIONS

Availability

The National Transportation Safety Board, by letter of December 17, has supplied comments on the Federal Railroad Administration's recent proposal to amend 49 CFR Part 221. The notice of proposed rulemakng—Docket No. RSRM-1, Notice 1, Rear End Marking Devices-Passenger, Commuter and Freight Trains—was published November 17, 1976, at 41 FR 50701.

In commenting on the FRA proposal, the Safety Board points to its earlier recommendations for improving the conspicuity of the rear end of trains. The Board's December 17 letter makes specific reference to the recommendation, No. R-76-25, which asked FRA to "establish standards for rear end visibility of trains." The recommendation was made in light of investigation of the rear end collision of a Penn Central commuter train and a Metroliner near Wilmington, Delaware, October 17, 1975. (See 41 FR 32794, August 5, 1976.)

The Safety Board comments that rules issued by the Secretary of Transportation in compliance with section 5(b), Federal Railroad Safety Authorization Act of 1976, Pub. L. 94-348, should seek to establish a standard which will assist the locomotive engineer controlling trains to detect rolling stock on the track structure. The Board believes that a uniform marking device should be developed so that, when the agreed-upon symbol is detected by the engineer, he will immediately recognize it as an obstruction and take appropriate action. The Board notes that Federal standards should convey as much information as is practical; also, spacing of the markers, the size of the marker, and the intensity of the illumination should be uniform so that there is no misperception by the individual observing the markers.

The Board further believes that instructions should be developed so that crewmembers will be informed that markers are lighted. When darkness falls or when visibility is reduced after the train is en route, the Board stated, the locomotive engineer and the conductor should be notified of rear end illumination.

As a result of investigation of the Southern Pacific Transportation Company freight train/automobile grade crossing collision in Tracy, California, on March 9, 1975, the Safety Board issued recommendations H-76-2 and H-76-3 to the National Highway Traffic Safety Administration. These recommendations requested that NHTSA determine the effectiveness of currently employed traffic information and control systems at railroad crossings and develop more effective systems for use at temporary traffic control sites with respect to impaired drivers. (See 41 FR 14953, April 8, 1976.)

Subsequently, NHTSA informed the Safety Board that it believes these recommendations fall under the jurisdiction of the Federal Highway Administration, and that NHTSA will coordinate its research and program efforts as they relate to these recommendations with FHWA to maximize the contribution FHWA can make to the issues raised. The Safety Board, in agreement with this decision, on December 21 directed recommendations H-76-2 and H-76-3 to FHWA.

Copies of letters concerning Safety Board recommendations may be obtained at a cost of $4.00 for service and 10¢ per page for reproduction. All requests must be in writing, identified by recommendation number and date of publication of this notice in the FEDERAL REGISTER. Address inquiries to: Publications Unit, National Transportation Safety Board, Washington, D.C. 20594.

(Sec. 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2172 (49 U.S.C. 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

DECEMBER 23, 1976.

[FR Doc.76-38146 Filed 12-28-76;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Department Order 107; Rev. 20]

DIRECTOR, OFFICE OF ADMINISTRATIVE PROGRAMS, ET AL.

Delegation of Authority

By virtue of the authority vested in the Secretary of the Treasury, including the authority conferred by 5 U.S.C. 301, and by virtue of the authority delegated to me by Treasury Department Order No. 190 Revised, it is hereby ordered that the head of each Treasury bureau and his deputy is authorized to affix the Seal of the Department of the Treasury in the authentication of originals and copies of books, records, papers, writings, and documents of the Department, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b).

Bureau heads or their deputies may delegate this authority to appropriate subordinate officials.

In the Office of the Secretary, the following are authorized to affix the Seal of the Department of the Treasury under this delegation:

1. Director, Office of Administrative Programs
2. Deputy Director, Office of Administrative Programs
3. Assistant Director (Paperwork Management), Office of Administrative Programs

a. Chief, Departmental Paperwork Management Staff

b. Chief, Document Management Branch

(1) Chief, Document Distribution Section

The Head of each bureau and the Director of Administrative Programs are authorized to procure and maintain custody of the dies of the Treasury Seal.

Treasury Department Order No. 107 (Revision 19) dated August 11, 1975 is superseded.

Dated: December 21, 1976.

WARREN F. BRECHT,
Assistant Secretary (Administration).

[FR Doc.76-38129 Filed 12-28-76;8:45 am]

HUNGARY

Removal of Johnson Act Restrictions

Notice is hereby given that the Government of the Hungarian People's Republic has recently made full payment of all indebtedness owed by it to the United States Government through December 15, 1976, and is therefore not now "in default in the payment of its obligations, or any part thereof to the United States", within the meaning of the Johnson Act (Pub. L. 80-772, 62 Stat. 744 (18 U.S.C. 955)). Therefore, the restrictions of the Johnson Act, which forbids persons within the United States from engaging in specified financial transactions with certain foreign governments in default in the payment of their obligations to the United States Government, do not now apply to the Hungarian People's Republic.

GERALD L. PARSKY,
Assistant Secretary for International Affairs.

DECEMBER 23, 1976.

[FR Doc.76-38260 Filed 12-28-76;10:53 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 222]

ASSIGNMENT OF HEARINGS

DECEMBER 23, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC-F-11874, Matlack, Inc.—Control—C.F. Tank Lines, Inc., now being assigned prehearing conferences February 1, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 121607 (Sub-No. 8), Columbia-Pacific Transport Co.—Crane Division, now assigned January 24, 1977, at Seattle, Wash. is canceled and reassigned for January 24, 1977 (1 week), at Richland, Wash., Hanford House, George Washington Way at Knight Street.

MC 115904 (Sub-No. 47), Grover Trucking Co., now assigned March 2, 1977, at Boise, Idaho is postponed to March 21, 1977 (3 days), at Boise, Idaho; in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc. 76-38220 Filed 12-28-76;8:45 am]

[AB 1 (Sub-No. 52)]

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

Abandonment of Line

DECEMBER 16, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment of the Chicago and North Western Transportation Company branch line extending 26.3 miles between Rosemere and Forest Junction, in Manitowoc and Calumet Counties, Wisc., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that alternative transportation is available in the region and the environmental effects attendant to the diversion of traffic from the line to motor carriers would be minimal. Abandonment should not preclude the movement of goods. Although an industrial park is located adjacent to the right-of-way, adequate highways exist to serve this facility and alternative rail service is in close proximity. Full development of the park should not be inhibited. A determination has been made that the right-of-way would be suitable for public use.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before January 31, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38219 Filed 12-28-76;8:45 am]

[AB 12 (Sub-No. 50)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment of Line

DECEMBER 16, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Southern Pacific Transportation Company of its line extending from Burrell in a southeasterly direction to the end of the branch near Riverdale, a distance of 6.12 miles, in Fresno County, Calif., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(c) of the NEPA.

It was concluded, among other things, that the associated environmental impacts are not considered significant because traffic on the subject line has been declining, and the area is no longer an important trans-shipment point for grain. There are a number of alternate railheads located in close proximity to the line which can handle diverted traffic. As a result, abandonment will not cause any significant increases in air pollution or fuel consumption.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before January 31, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38218 Filed 12-28-76;8:45 am]

[Rule 19; Ex Parte No. 241; Exemption No. 130]

PITTSBURGH AND LAKE ERIE RAILROAD CO.

Exemption Under Mandatory Car Service Rules

It appearing that the railroad named below owns numerous plain gondolas; that under present conditions there are substantial surpluses of these cars on its line; that return of these cars to the owner would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owner; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of ultilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain gondola cars, less than 61-ft. in length described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having mechanical designations "GA", "GB", "GD", "GH", "GS", "GT", and "GW", which are less than 61-ft. in length which bear the reporting marks listed below, may be used without regard to the requirements of Car Service Rules 1(a), 2(a) and 2(b).

The Pittsburgh and Lake Erie Railroad Company Reporting Marks: P&LE

Effective: December 15, 1976.

Expires: January 31, 1977.

Issued at Washington, D.C., December 9, 1976.

INTERSTATE COMMERCE COMMISSION,

JOEL E. BURNS,
Agent.

[FR Doc.76-38221 Filed 12-28-76;8:45 am]

[Order No. 15; Service Order No. 1252]

CONSOLIDATED RAIL CORP.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, the Consolidated Rail Corporation (ConRail) is unable to transport trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) traffic requiring handling at its Boston (Beacon Park), Massachusetts, TOFC-COFC facility because of a work stoppage by certain employees stationed at that facility.

It is ordered, That:

(a) ConRail, being unable to transport TOFC and COFC traffic requiring handling at Boston (Beacon Park), Massachusetts, TOFC-COFC facility because of a work stoppage; that carrier is hereby authorized to reroute or divert such traffic via any available route to expedite the movement. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now

exist between them with reference to the division of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 3:00 p.m., December 14, 1976.

(g) *Expiration date.* This order shall expire at 11:59 p.m., December 23, 1976, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement, under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 14, 1976.

INTERSTATE COMMERCE COMMISSION,

JOEL E. BURNS,
Agent.

[FR Doc.76-38222 Filed 12-28-76;8:45 am]

IRREGULAR—ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

DECEMBER 23, 1976.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR Part 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before January 10, 1977. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 8973 (Sub-No. E89), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING INC., 2429 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such hardware, building materials, equipment, and supplies as is aluminum sheet,* from the facilities of Alcan Aluminum Corporation at Fairmont, W. Va., to those points in Pennsylvania on and east of a line beginning at the Pennsylvania-New Jersey State line at Pond Eddy, Pa., thence south along an unmarked road to Milford, Pa., and U.S. Highway 209, thence south along U.S. Highway 209 to Dingman's Ferry, Pa., thence east along an unmarked road to the Pennsylvania State line, and that part of Pennsylvania on and east of a line beginning on the Delaware River at Washington Crossing, thence south on Pennsylvania State Highway 32 to Interstate Route 95, thence south on Interstate Highway 95 to an unmarked road leading to Yardley, thence east to Pennsylvania Highway 32, thence south on Pennsylvania Highway 32 to the Pennsylvania-New Jersey State line.

The purpose of this filing is to eliminate the gateway of the facilities of Alcan Aluminum Corporation at Woodbridge, N.J.

No. MC 8973 (Sub-No. E90), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such hardware, building materials, equipment, and supplies as is aluminum sheet,* from the facilities of Alcan Aluminum Corporation at Oswego, N.Y., to points in Delaware.

The purpose of this filing is to eliminate the gateway of the facilities of Alcan Aluminum Corporation at Woodbridge, N.J.

No. MC 8973 (Sub-No. E91), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such hardware, building materials, equipment, and supplies as is aluminum sheet,* from the facilities of Alcan Aluminum Corporation at Oswego, N.Y., to those points in New Jersey on and east of a line beginning on the Pennsylvania-New Jersey State line at Stockton, N.J., thence north along New Jersey Secondary State Highway 523 to junction New Jersey Secondary State Highway 517, thence north on New Jersey Highway 517 through Fairmount to an unmarked road leading north to New Jersey Secondary Highway 513, thence north on the road to New Jersey Highway 513 to New Jersey Highway 10, thence east on New Jersey Highway 10 to New Jersey Highway 53, thence north on New Jersey Highway 53 to Denville, N.J., thence north on an unmarked road through Kinnelon and Butler, N.J., thence east on the same road to U.S. Highway 202, thence north on U.S. Highway 202 to New Jersey Secondary Highway 208, thence east on New Jersey Highway 208 to an unmarked road leading to Wyckoff, N.J., thence north on the unmarked road through Ramsey, N.J., to New Jersey Secondary Highway 507, thence north on New Jersey Secondary Highway 507 through Mahwah to the New Jersey-New York State line.

The purpose of this filing is to eliminate the gateway of the facilities of Alcan Aluminum Corporation at Woodbridge, N.J.

No. MC 8973 (Sub-No. E92), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such hardware, building materials, equipment, and supplies as is aluminum sheet,* from the facilities of Alcan Aluminum Corporation at Oswego, N.Y., to those points in Pennsylvania on and east of a line beginning on the Delaware River at Point Pleasant, Pa., thence south along an unmarked road to Pennsylvania Highway 413, thence south along Pennsylvania Highway 413 to junction U.S Highway 202, thence west on U.S. Highway 202 to Doylestown, Pa., thence south on Pennsylvania Highway 611 to Interstate Highway 276, thence west on Interstate Highway 276 to junction Pennsylvania Highway 23, thence south on Pennsylvania Highway 23 to junction Pennsylvania Highway 320, thence south on Pennsylvania Highway 320 to junction Pennsylvania Highway 3, thence west on Pennsylvania Highway 3 to an unmarked road, thence south along the unmarked road to U.S Highway 1, thence west along U.S. Highway 1 through Concordville, Pa, to U.S. Highway 202, thence south on U.S. Highway 202 to the Delaware-Pennsylvania State line.

The purpose of this filing is to eliminate the gateway of the facilities of Alcan Aluminum Corporation at Woodbridge, N.J.

No. MC 8973 (Sub-No. E93), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such hardware, building materials, equipment, and supplies as is aluminum sheet,* from the facilities of Alcan Aluminum Corporation at Oswego, N.Y., to those points in Maryland on and south of a line beginning on the Potomac River at Marshall Hall, Md., thence south on Maryland Highway 227, to Maryland Highway 210, thence north on Maryland Highway 210 to junction Maryland Highway 373, thence east on Maryland Highway 373 to junction U.S. Highway 301, thence north on U.S. Highway 301 to Maryland Highway 4, thence east on Maryland Highway

4 to junction Maryland Highway 258, thence east on Maryland Highway 258 to Maryland Highway 256, thence east on Maryland Highway 256 to Deale, Md., and the Chesapeake Bay, thence north along the Intracoastal Waterway, through Chesapeake City, Md., and along the Delaware-Chesapeake Canal to the Delaware State line.

The purpose of this filing is to eliminate the gateway of the facilities of Alcan Aluminum Corporation at Woodbridge, N.J.

No. MC 8973 (Sub-No. E95), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such hardware, building materials, equipment, and supplies as is aluminum sheet*, from the facilities of Alcan Aluminum Corporation at Warren, Ohio, to points in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut.

The purpose of this filing is to eliminate the gateway of the facilities of Alcan Aluminum Corporation at Woodbridge, N.J

No. MC 8973 (Sub-No. E100), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum sheet*, from the facilities of Alcan Aluminum Corporation at Oswego, N.Y., to that portion of the New York, N.Y. Commercial Zone, as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(B)(8) of the Interstate Commerce Act (the exempt zone), restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment.

The purpose of this filing is to eliminate the gateways of the facilities of Alcan Aluminium Corporation at South Kearney, N.J., and points in the New York, N.Y. Exempt Zone that is also in New York, N.Y.

No. MC 8973 (Sub-No. E101), filed July 1, 1976. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th St., N. Bergen, N.J. 07047. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum sheet*, from the facilities of Alcan Aluminum Corporation at Warren, Ohio, to that portion of the New York, N.Y., Commercial zone, as defined in the *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(B)(8) of the Interstate Commerce Act (the exempt zone), restricted against the transportation of Class A and B explosives, commodities in bulk, and those commodities requiring special equipment.

The purpose of this filing is to eliminate the gateway of the facilities of Alcan Aluminum Corporation at South Kearny, N.J., and points in the New York, N.Y. Exempt Zone that is also in New York, N.Y.

No. MC 46990 (Sub-No. E17), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Alabama and Arkansas.

The purpose of this filing is to eliminate the gateways of New York, N.Y. and Philadelphia, Pa.

No. MC 46990 (Sub-No. E18), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Delaware and Colorado.

The purpose of this filing is to eliminate the gateways of New York, N.Y., Philadelphia, Pa., and Kinsley, Kans., and points within 60 miles thereof.

No. MC 46990 (Sub-No. E19), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Florida and Washington, D.C.

The purpose of this filing is to eliminate the gateways of New York, N.Y., and Philadelphia, Pa.

No. MC 46990 (Sub-No. E20), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Kansas and Georgia.

The purpose of this filing is to eliminate the gateways of Philadelphia, Pa., and New York, N.Y.

No. MC 46990 (Sub-No. E21), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Ohio, Indiana, Michigan, and Illinois.

The purpose of this filing is to eliminate the gateways of Syracuse, N.Y. and Philadelphia, Pa.

No. MC 46990 (Sub-No. E22), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Louisiana and Kentucky.

The purpose of this filing is to eliminate the gateways of New York, N.Y. and Philadelphia, Pa.

No. MC 46990 (Sub-No. E23), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Mississippi and Maryland.

The purpose of this filing is to eliminate the gateways of New York, N.Y., and Philadelphia, Pa.

No. MC 46990 (Sub-No. E24), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between

points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in North Carolina and Missouri. The purpose of this filing is to eliminate the gateways of New York, N.Y. and Philadelphia, Pa.

No. MC 46990 (Sub-No. E25), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Oklahoma on and west of Interstate Highway 35. The purpose of this filing is to eliminate the gateways of Philadelphia, Pa. and Kinsley, Kans. and points within 60 miles thereof.

No. MC 46990 (Sub-No. E26), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in South Carolina and Pennsylvania on and west of the Susquehanna River. The purpose of this filing is to eliminate the gateways of Philadelphia, Pa., New York, N.Y., and Syracuse, N.Y.

No. MC 46990 (Sub-No. E27), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in Texas and Tennessee. The purpose of this filing is to eliminate the gateways of New York, N.Y. and Philadelphia, Pa.

No. MC 46990 (Sub-No. E28), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (1) between points in Massachusetts, Rhode Island, and Connecticut, on the one hand, and, on the other, points in West Virginia and Virginia, (2) between points in Virginia, on the one hand, and, on the other, points in Rhode Island, Vermont, and Connecticut, and (3) between points in Virginia, on the one hand, and on the other, points in Massachusetts. The purpose of this filing is to eliminate the gateways of (1) New York, N.Y. and Philadelphia, Pa., for (1), and for (2) Philadelphia, Pa., New York, N.Y., and Syracuse, N.Y. and for (3) Philadelphia, Pa., and New York, N.Y.

No. MC 46990 (Sub-No. E32), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in New Jersey, on the one hand, and, on the other, points in Connecticut. The purpose of this filing is to eliminate the gateway of New York, N.Y.

No. MC 46990 (Sub-No. E33), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in New Jersey, on the one hand, and, on the other, points in Delaware. The purpose of this filing is to eliminate the gateways of New York, N.Y., and Philadelphia, Pa.

No. MC 46990 (Sub-No. E45), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Delaware, on the one hand, and, on the other, points in Colorado and the District of Columbia. The purpose of this filing is to eliminate the gateways of Philadelphia, Pa., and Kinsley, Kans.

No. MC 46990 (Sub-No. E48), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Delaware, on the one hand, and, on the other, points in Louisiana and Massachusetts. The purpose of this filing is to eliminate the gateways of Philadelphia, Pa., and New York, N.Y.

No. MC 46990 (Sub-No. E50), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in New Castle County, Del., on the one hand, and, on the other, points in Missouri and Ohio. The purpose of this filing is to eliminate the gateway of Philadelphia, Pa.

No. MC 46990 (Sub-No. E51), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Delaware, on the one hand, and, on the other, points in Oklahoma and Rhode Island. The purpose of this filing is to eliminate the gateways of Philadelphia, Pa., Kinsley, Kans., and New York, N.Y.

No. MC 46990 (Sub-No. E56), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Maryland on and east of Interstate Highway 81 (except points east of the Chesapeake Bay and except Washington, Frederick, and Carroll Counties, Md.), on the one hand, and, on the other, points in Alabama, Arkansas, and Florida. The purpose of this filing is to eliminate the gateway of Philadelphia, Pa.

No. MC 46990 (Sub-No. E57), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Maryland, on and east of Interstate Highway 81 (except points in Maryland east of the Chesapeake Bay), on the one hand, and, on the other, points in Colorado, points in Illinois on and north of Interstate Highway 74, and points in Kansas. The purpose of this filing is to eliminate the gateways of Philadelphia, Pa., and Kinsley, Kans.

No. MC 46990 (Sub-No. E58), filed June 4, 1974. Applicant: TRANS-

COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Maryland on and east of Interstate Highway 81 (except points east of the Chesapeake Bay and except Washington, Frederick, and Carroll Counties, Md.), on the one hand, and, on the other, points in Mississippi and Missouri. The purpose of this filing is to eliminate the gateway of Philadelphia, Pa.

No. MC 46990 (Sub-No. E59), filed June 4, 1974. Applicant: TRANS-COUNTRY VAN LINES, INC., 3300 Veteran Highway, Bohemia, N.Y. 11716. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Maryland on and east of Interstate Highway 81 (except points in Maryland on and east of the Chesapeake Bay), on the one hand, and, on the other, points in Louisiana and Texas. The purpose of this filing is to eliminate the gateway of Philadelphia, Pa.

No. MC 61825 (Sub-No. E774), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in New York on and southeast of a line beginning at the Pennsylvania-New York State line and extending east along New York Highway 652 to junction New York Highway 97, thence east along New York Highway 97 to junction New York Highway 52, thence northeast along New York Highway 52 to junction U.S. Highway 209, thence northeast along U.S. Highway 209 to junction New York Highway 213, thence east along New York Highway 213 to junction New York Highway 32, thence northeast along New York Highway 32 to junction Interstate Highway 87, thence north along Interstate Highway 87 to junction New York Highway 7, thence east along New York Highway 7 to the New York-Vermont State line, and those points in Pennsylvania on and bounded by a line beginning at the New Jersey-Pennsylvania State line and extending west along U.S. Highway 202 to junction U.S. Highway 422, thence along U.S. Highway 422 to junction U.S. Highway 322, thence west along U.S. Highway 322 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction Interstate Highway 81, thence northeast along Interstate Highway 81 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction Pennsylvania Highway 652, thence northeast along Pennsylvania Highway 652 to the Pennsylvania-New York State line, thence southeast along the Pennsylvania-New York State line to the Pennsylvania-New Jersey State line.

Thence south along the Pennsylvania-New Jersey State line to point of beginning, on the one hand, and, on the other, points in Arizona, California, Nevada, Oregon, and Washington, and points in Colorado, Idaho, Montana, New Mexico, and Utah on and southwest of a line beginning at the Texas-New Mexico State line and extending west along U.S. Highway 66 to junction New Mexico Highway 104, thence northwest New Mexico Highway 104 to junction New Mexico Highway 3, thence north along New Mexico Highway 3 to junction New Mexico Highway 38, thence northwest along New Mexico Highway 38 to junction New Mexico Highway 3, thence north along New Mexico Highway 3 to junction Colorado Highway 159, thence north along Colorado Highway 159 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction Colorado Highway 17, thence north along Colorado Highway 17 to junction U.S. Highway 285, thence north along U.S. Highway 285 to junction U.S. Highway 50, thence east along U.S. Highway 50 to Salida, Colorado, thence northwest along U.S. Highway 50 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 91, thence north along U.S. Highway 91 to junction U.S. Highway 30N, thence west along U.S. Highway 30N to junction Interstate Highway 80N, thence west along Interstate Highway 80N to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction U.S. Highway 26, thence northeast along U.S. Highway 26 to junction Idaho Highway 68, thence west along Idaho Highway 68 to junction Idaho Highway 23, thence northwest along Idaho Highway 23 to junction U.S. Highway 93, thence north along U.S. Highway 93 to Sun Valley, Idaho, thence northeast along unnumbered Highway to junction U.S. Highway 93 Alternate, thence northwest along U.S. Highway 93 Alternate to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction Montana Highway 49, thence north along Montana Highway 49 to junction U.S. Highway 89, thence north along U.S. Highway 89 to the United States-Canadian International Boundary line, restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateways of Pulaski, Lynchburg and Bedford, Va.

No. MC 61825 (Sub-No. E775), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in New York and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 15 to junction U.S. Highway 15 (Business Rd), thence north along U.S. Highway 15 (Business Rd), to junction U.S. Highway 15, thence north along U.S. Highway 15 to Harrisburg, Pennsylvania, thence north along U.S. Highway 22 to junction Interstate Highway 81, thence northeast along Interstate Highway 81 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction Pennsylvania Highway 652, thence northeast along Pennsylvania Highway 652 to junction New York Highway 97, thence east along New York Highway 97 to junction New York Highway 52, thence northeast along New York Highway 52 to junction U.S. Highway 209, thence northeast along U.S. Highway 209 to junction New York Highway 213, thence east along New York Highway 213 to junction New York Highway 32, thence northeast along New York Highway 32 to junction Interstate Highway 87, thence north along Interstate Highway 87 to junction New York Highway 7, thence east along New York Highway 7 to the New York-Vermont State line, thence north along the New York-Vermont State line to U.S. Highway 9 to junction New York Highway 50, thence south along New York Highway 50 to junction New York Highway 67, thence west along New York Highway 67 to junction New York Highway 30, thence south along New York Highway 30 to junction New York Highway 7, thence southwest along New York Highway 7 to junction New York Highway 23, thence west along New York Highway 23 to junction New York Highway 12, thence southwest along New York Highway 12 to junction New York Highway 17, thence west along New York Highway 17 to junction New York Highway 17C.

Thence west along New York Highway 17C to junction New York Highway 17 to junction New York Highway 282, thence south along New York Highway 282 to junction Pennsylvania Highway 187, thence south along Pennsylvania Highway 187 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction U.S. Highway 220, thence south along U.S. Highway 220 to junction Pennsylvania Highway 87, thence southwest along Pennsylvania Highway 87 to junction U.S. Highway 220, thence west along U.S. Highway 220 to junction U.S. Highway 15, thence south along U.S. Highway 15 to junction Pennsylvania Highway 45, thence west along Pennsylvania Highway 45 to junction Pennsylvania Highway 235, thence south along Pennsylvania Highway 235 to junction U.S. Highway 522, thence southwest along U.S. Highway 522 to junction U.S. Highway 322, thence north along U.S. Highway 322 to junction Pennsylvania Highway 655, thence southwest along Pennsylvania Highway 655 to junction U.S. Highway 22, thence west along U.S. Highway 22 to junction Pennsylvania

Highway 36, thence north along Pennsylvania Highway 36 to junction U.S. Highway 220 at Altoona, Pa., thence south along U.S. Highway 220 to junction Pennsylvania Highway 164, thence east along Pennsylvania Highway 164 to junction Pennsylvania Highway 36, thence south along Pennsylvania Highway 36 to junction Pennsylvania Highway 26, thence east along Pennsylvania Highway 26 to junction Pennsylvania Highway 915, thence south along Pennsylvania Highway 915 to junction Interstate Highway 70, thence south along Interstate Highway 70 to junction Pennsylvania Highway 643, thence southeast along Pennsylvania Highway 643 to junction U.S. Highway 522, thence south along U.S. Highway 522 to the Pennsylvania-Maryland State line, and thence east along the Pennsylvania-Maryland State line to point of beginning, on the one hand, and, on the other, points in California and Oregon, and points in Arizona, Idaho, Nevada, New Mexico, Utah, and Washington, on and southwest of a line beginning at the Texas-New Mexico State line and extending west along the New Mexico Highway 83 to junction U.S. Highway 82, thence west along U.S. Highway 82 to junction New Mexico Highway 172, thence north along New Mexico Highway 172 to junction New Mexico Highway 31, thence west along New Mexico Highway 31 to junction New Mexico Highway 2, thence north along New Mexico Highway 2 to junction U.S. Highway 380, thence west along U.S. Highway 380 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction New Mexico Highway 6, thence northwest along New Mexico Highway 6 to junction U.S. Highway 66, thence northwest along U.S. Highway 66 to junction U.S. Highway 666.

Thence north along U.S. Highway 666 to junction New Mexico Highway 264, thence west along New Mexico Highway 264 to junction Arizona Highway 264, thence west along Arizona Highway 264 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction U.S. Highway 89, thence northwest along U.S. Highway 89 to junction Utah Highway 14, thence west along Utah Highway 14 to junction Utah Highway 130, thence north along Utah Highway 130 to junction Utah Highway 21, thence northwest along Utah Highway 21 to junction Nevada Highway 73, thence Northwest along Nevada Highway 73 to junction U.S. Highway 50, thence west along U.S. Highway 50 to junction Nevada Highway 51, thence north along Nevada Highway 51 to junction U.S. Highway 40, thence west along U.S. Highway 40 to junction Nevada Highway 18A, thence northwest along Nevada Highway 18A to junction Nevada Highway 18, thence east along Nevada Highway 18 to junction Nevada Highway 11, thence north along Nevada Highway 11 to junction Nevada Highway 51, thence north along Nevada Highway 51 to junction Idaho Highway 51, thence north along Idaho Highway 51 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to Boise, Idaho, thence northwest along Idaho Highway 44 to junction Idaho Highway 55, thence north along Idaho Highway 55 to junction U.S. Highway 95, thence north along U.S. Highway 95 to the Adams-Idaho County line (Idaho), thence west along the Adams-Idaho County line (Idaho) to the Idaho-Oregon State line, thence north along the Idaho-Oregon State line to the Idaho-Washington State line, thence north along the Idaho-Washington State line to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 95, thence north along U.S. Highway 95 to junction Idaho Highway 270, thence west along Idaho Highway 270 to junction Washington Highway 270, thence west along Washington Highway 270 to junction U.S. Highway 195, thence north along U.S. Highway 195 to junction U.S. Highway 395, thence northwest along U.S. Highway 395 to the United States-Canadian International Boundary line, restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment.

The purpose of this filing is to eliminate the gateways of Pulaski, Lynchburg, and Bedford, Va.

No. MC 61825 (Sub-No. E776), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in New York and Pennsylvania on and bounded by a line beginning at the West Virginia-Pennsylvania State line and extending north along U.S. Highway 119 to junction Pennsylvania Highway 88, thence north along Pennsylvania Highway 88 to junction Pennsylvania Highway 51, thence north along Pennsylvania Highway 51 to junction U.S. Highway 30, thence east along U.S. Highway 30 to junction Pennsylvania Highway 380, thence northeast along Pennsylvania Highway 380 to junction Pennsylvania Highway 66, thence north along Pennsylvania Highway 66 to junction Pennsylvania Highway 56, thence east along Pennsylvania Highway 56 to junction Pennsylvania Highway 156, thence northeast along Pennsylvania Highway 156 to junction Pennsylvania Highway 210, thence northeast along Pennslyvania Highway 210 to junction U.S. Highway 119, thence northeast along U.S. Highway 119 to junction Pennslyvania Highway 255, thence northeast along Pennslyvania Highway 255 to junction Pennslyvania Highway 555, thence east along Pennslyvania Highway 555 to junction Pennslyvania Highway 120, thence east along Pennslyvania Highway 120 to junction Pennslyvania Highway 144, thence north along Pennslyvania Highway 144 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennslyvania Highway 287, thence northeast along Pennslyvania Highway 287 to junction U.S. Highway 15, thence north along U.S. Highway 15 to junction New York Highway 54, thence northeast along New York Highway 54 to junction New York Highway 14.

Thence south along New York Highway 14 to junction New York Highway 414, thence north along New York Highway 414 to junction New York Highway 5, thence northeast along New York Highway 5 to junction New York Highway 90, thence north along New York Highway 90 to junction New York Highway 31, thence east along New York Highway 31 to junction New York Highway 34, thence north along New York Highway 34 to junction New York Highway 370, thence east along New York Highway 370 to junction New York Highway 176, thence northeast along New York Highway 176 to junction New York Highway 48, thence north along New York Highway 48 to the United States-Canadian International Boundary line, thence northeast along the United States-Canadian International Boundary line to the New York-Vermont State line, thence south along the New York-Vermont State line to Plattsburgh, N.Y., thence south along U.S. Highway 9 to junction New York Highway 50, thence south along New York Highway 50 to junction New York Highway 67, thence west along New York Highway 67 to junction New York Highway 30, thence south along New York Highway 30 to junction New York Highway 7, thence southwest along New York Highway 7 to junction New York Highway 23, thence west along New York Highway 23 to junction New York Highway 12, thence southwest along New York Highway 12 to junction New York Highway 17, thence west along New York Highway 17 to junction New York Highway 17C, thence west along New York Highway 17C to junction New York Highway 17 near Nichols, New York, thence south along New York Highway 17 to junction New York Highway 282, thence south along New York Highway 282 to junction Pennsylvania Highway 187, thence south along Pennsylvania Highway 187 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction U.S. Highway 220, thence south along U.S. Highway 220 to junction Pennsylvania Highway 87, thence southwest along Pennsylvania Highway 87 to junction U.S. Highway 220, thence west along U.S. Highway 220 to junction U.S. Highway 15, thence south along U.S. Highway 15 to junction Pennsylvania Highway 45, thence west along Pennsylvania Highway 45 to junction Pennsylvania Highway 235, thence south along Pennsylvania Highway 235 to junction U.S. Highway 522, thence northwest along U.S. Highway 522 to junction U.S. Highway 322, thence north along U.S. Highway 322 to junction Pennsylvania Highway 655, thence southwest along Pennsylvania Highway 655 to junction U.S. Highway 22, thence west along U.S. Highway 22 to junction Pennsylvania Highway 36, thence north along Pennsylvania Highway 36 to junction U.S. High-

way 220, thence south along U.S. Highway 220 to junction Pennsylvania Highway 164.

Thence east along Pennsylvania Highway 164 to junction Pennsylvania Highway 36, thence south along Pennsylvania Highway 36 to junction Pennsylvania Highway 26, thence east along Pennsylvania Highway 26 to junction Pennsylvania Highway 915, thence south along Pennsylvania Highway 915 to junction Interstate Highway 70, thence south along Interstate Highway 70 to junction Pennsylvania Highway 643, thence southeast along Pennsylvania Highway 643 to junction U.S. Highway 522, thence south along U.S. Highway 522 to the Pennsylvania-Maryland State line, thence west along the Pennsylvania-Maryland State line to the Pennsylvania-West Virginia State line, and thence west along the Pennsylvania-West Virginia State line to point of beginning, on the one hand, and, on the other, points in Arizona, California, Nevada, and Oregon on, South and west of a line beginning at the New Mexico-Arizona State line and extending west along U.S. Highway 70 to junction U.S. Highway 666, thence south along U.S. Highway 666 to junction Interstate Highway 10, thence west along Interstate Highway 10 to junction U.S. Highway 89, thence northwest along U.S. Highway 89 to junction U.S. Highway 93, thence northwest along U.S. Highway 93 to junction U.S. Highway 95, thence northwest along U.S. Highway 95 to junction Nevada Highway 58, thence southwest along Nevada Highway 58 to junction California Highway 58, thence southwest along California Highway 58 to junction California Highway 190, thence west along California Highway 190 to junction U.S. Highway 395, thence south along U.S. Highway 395 to junction California Highway 178, thence west along California Highway 178 to junction California Highway 155, thence west along California Highway 155 to junction California Highway 65, thence north along California Highway 65 to junction California Highway 198, thence west along California Highway 198 to junction California Highway 63.

Thence north along California Highway 63 to junction California Highway 180, thence west along California Highway 180 to junction California Highway 41, thence north along California Highway 41 to junction California Highway 49, thence northwest along California Highway 49 to junction California Highway 26, thence west along California Highway 26 to junction California Highway 99, thence north along California Highway 99 to junction California Highway 32, thence north along California Highway 32 to junction California Highway 36, thence northwest along California Highway 36 to junction California Highway 89, thence north along California Highway 89 to junction California Highway 299, thence northeast along California Highway 299 to junction California Highway 299 to junction California Highway 139, thence north along California Highway 139 to junction Oregon Highway 39, thence northwest along Oregon Highway 39 to junction U.S. Highway 97, thence north along U.S. Highway 97 to junction Oregon Highway 58, thence northwest along Oregon Highway 58 to junction Interstate Highway 5, thence north along Interstate Highway 5 to junction Oregon Highway 22, thence west along Oregon Highway 22 to junction U.S. Highway 101, thence north along U.S. Highway 101 to the Oregon-Washington State line, restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment.

The purpose of this filing is to eliminate the gateways of Pulaski, Lynchburg, and Bedford, Va.

No. MC 76677 (Sub-No. E1) (Partial correction), filed May 23, 1974, published in the FEDERAL REGISTER issue of September 23, 1975, and republished, as corrected, this issue. Applicant: HALLAMORE MOTOR TRANSPORTATION INC., 795 Plymouth Street, Holbrook, Mass. 02343. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, Mass. 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, because of size or weight, require the use of special equipment. The purpose of this filing is to eliminate the gateways of: Massachusetts within 50 miles of Boston, Mass., in (A) (2) and (7) above; points in Massachusetts within 35 miles of Brockton, Mass., in (11) and (12), (20) and (21) above; and points in Massachusetts within 50 miles of Boston, Mass.

NOTE.—The purpose of this correction is to reflect the true scope of applicant's authority. The remainder of this letter notice remains as previously published.

No. MC 95540 (Sub-No. E324), (Correction), filed May 13, 1974, published in the FEDERAL REGISTER issue of April 15, 1975, and republished, as corrected, this issue. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, Fla. 33802. Applicant's representative: Benjy W. Fincher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits*, and *frozen vegetables, from those points* in Michigan on and east of a line beginning at Saginaw Bay and extending along Michigan Highway 247 to junction Michigan Highway 13, thence along Michigan Highway 13 to junction Michigan Highway 52, thence along Michigan Highway 52 to junction Michigan Highway 21, thence along Michigan Highway 21 to junction U.S. Highway 27, thence along U.S. Highway 27 to junction U.S. Highway 127, thence along U.S. Highway 127 to the Ohio-Michigan State line, to those points in Arkansas on and south of a line beginning at the Arkansas-Tennessee State line and extending along Interstate Highway 55 to junction U.S. Highway 64, thence along U.S. Highway 64 to junction U.S. Highway 67/167, thence along U.S. Highway 67/167 to junction Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Oklahoma State line. The purpose of this filing is to eliminate the gateway of Florence, Ala.

NOTE.—The purpose of this correction is to correct the territorial description.

No. MC 95540 (Sub-No. E336) (Correction), filed May 13, 1974, published in the FEDERAL REGISTER issue of April 15, 1975, and republished, as corrected, this issue. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, Fla. 33802. Applicant's representative: Benjy W. Fincher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk and except meat, meat products, meat by-products, and articles distributed by meat packinghouses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766), from points in Texas on and south of a line originating in western Texas., near the Rio Grande River, near Eperanza, Tex., on Interstate Highway 10 and extending east through Ft. Stockton to junction U.S. Highway 67/385, thence east on U.S. Highway 67 to San Angelo, thence east on U.S. Highway 87 to Brady, thence east on U.S. Highway 190 to Temple, thence east on Texas Highway 53 to junction U.S. Highway 77 and traveling south to junction U.S. Highway 190, thence east on U.S. Highway 190 to junction U.S. Highway 79 and traveling south to junction Texas Highway 6, thence south on Texas Highway 6 to Bryan, thence east on U.S. Highway 190 to Huntsville, thence north on Texas Highway 19 to junction Texas Highway 94 and traveling north to Lufkin, thence on Texas Highway 103 to junction Texas Highway 21 traveling east to boundary, to those points in Illinois on and north and east of a line beginning at the Kentucky-Illinois State line and extending along U.S. Highway 45 to junction Illinoise Highway 145, thence along Illinois Highway 145 to junction Illinois Highway 142, thence along Illinois Highway 142 to junction U.S. Highway 45, thence along U.S. Highway 45 to junction Illinois Highway 32, thence along Illinois Highway 32 to junction Illinois Highway 121, thence along Illinois Highway 121 to junction Illinois Highway 51, thence along Illinois Highway 51 to junction Illinois Highway 64, thence along Illinois Highway 64 to junction U.S. Highway 52, thence along U.S. Highway 52 to the Mississippi River.

The purpose of this filing is to eliminate the gateway of Florence, Ala.

NOTE.—The purpose of this correction is to state the correct territorial description.

No. MC 95540 (Sub-No. E865), filed May 20, 1974. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, Fla. 33802. Applicant's representative: Benjy W. Fincher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen meat*, from

Carrollton, Ga., to points in Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Arkansas, Wisconsin, Illinois, Indiana, Michigan, and points in Pennsylvania on, west, and north of a line beginning at the Pennsylvania-New York State line and extending along U.S. Highway 15 to junction Pennsylvania Highway 287, thence along Pennsylvania Highway 287 to junction Pennsylvania Highway 660, thence along Pennsylvania Highway 660 to junction Pennsylvania Highway 362, thence along Pennsylvania Highway 362 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction Pennsylvania Highway 144, thence along Pennsylvania Highway 144 to junction Pennsylvania Highway 879, thence along Pennsylvania Highway 879 to junction U.S. Highway 219, thence along U.S. Highway 219 to junction Pennsylvania Highway 286, thence along Pennsylvania Highway 286 to junction U.S. Highway 119, thence along U.S. Highway 119 to junction Interstate Highway 70, thence along Interstate Highway 70 to the Pennsylvania-West Virginia State line, and to points in New York on, north, and west of a line beginning at the New York-Massachusetts State line and extending along New York Highway 2 to junction New York Highway 7, thence along New York Highway 7 to junction New York Highway 5, thence along New York Highway 5 to junction New York Highway 51, thence along New York Highway 51 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction New York Highway 13, thence along New York Highway 13 to junction New York Highway 328, thence along New York Highway 328 to the New York-Pennsylvania State line.

The purpose of this filing is to eliminate the gateway of Florence, Ala.

No. MC 105813 (Sub-No. E41), filed December 19, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski Road, Chicago, Ill. 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible meats, edible meat products, and meat by-products, and edible articles* distributed by meat packing houses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant site of Geo. A. Hormel & Co., at or near Bureau, Ill., to those points in Mississippi on and south of a line beginning at the Alabama-Mississippi State line and extending west along Mississippi Highway 42 to junction U.S. Highway 11, thence south along U.S. Highway 11 to junction Interstate Highway 59, thence south along Interstate Highway 59 to the Louisiana-Mississippi State line, and to those points in South Carolina on and south of a line beginning at the Atlantic Ocean and extending west along U.S. Highway 21 to junction South Carolina Highway 170, thence west along South Carolina Highway 170 to junction U.S. Highway 278, thence north along U.S. Highway 278 to junction South Carolina Highway 336, thence west along South Carolina Highway 336 to junction U.S. Highway 321-601, thence south along U.S. Highway 321-601 to the Georgia-South Carolina State line. Restriction: The service authorized herein is restricted to the transportation of traffic originating at the plant site of Geo. A. Hormel & Co., at or near Bureau, Ill. The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC 105813 (Sub-No. E42), filed December 19, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik, 700 South Pulaski Road, Chicago, Ill. 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible meats, edible meat products, and meat by-products, and edible articles* distributed by meat packing houses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant site of Oscar Mayer & Co., at Beardstown, Ill., to those points in Mississippi on and south of a line beginning at the Alabama-Mississippi State line and extending west along Mississippi Highway 594 to junction Mississippi Highway 63, thence west along Mississippi Highway 63 to junction Mississippi Highway 57, thence west along Mississippi Highway 57 to junction Mississippi Highway 26, thence west along Mississippi Highway 26 to junction U.S. Highway 11, thence south along U.S. Highway 11 to junction Interstate Highway 59, thence south along Interstate Highway 59 to the Louisiana-Mississippi State line and to those points in South Carolina on and south of a line beginning at the Atlantic Ocean and extending west along U.S. Highway 21 to junction South Carolina Highway 170, thence west along South Carolina Highway 170 to junction U.S. Highway 278, thence north along U.S. Highway 278 to junction South Carolina Highway 336, thence west along South Carolina Highway 336 to junction U.S. Highway 321-601, thence south along U.S. Highway 321-601 to the Georgia-South Carolina State line. Restriction: The authority granted herein is restricted to the transportation originating at the plant site of Oscar Mayer & Co., Inc., at Beardstown, Ill. The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC 105813 (Sub-No. E65), filed December 5, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural commodities*, except commodities in bulk, from points in the New York, N.Y., Commercial Zone as defined in New York, N.Y., Commercial Zone, 1 M.C.C. 665 and 2 M.C.C. 191, to those points in Mississippi on and south of a line beginning at the Alabama-Mississippi State line and extending west along U.S. Highway 82 to junction Mississippi Highway 9, thence north along Mississippi Highway 9 to junction Mississippi Highway 8, thence west along Mississippi Highway 8 to the Arkansas-Mississippi State line, and points in that part of Arkansas on and south of a line beginning at the Arkansas Highway 4 to junction U.S. Highway 70, thence west along U.S. Highway 70 to the Arkansas-Oklahoma State line, and to those points in Oklahoma on and south of a line beginning at Arkansas-Oklahoma State line and extending west along U.S. Highway 70 to the Oklahoma-Texas State line, and to those points in Texas beginning at the Oklahoma-Texas State line and extending south and west along U.S. Highway 70 to junction U.S. Highway 287, thence west along U.S. Highway 287 to junction U.S. Highway 66, thence west along U.S. Highway 66 to the New Mexico-Texas State line. The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC 107515 (Sub-No. E501), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 33050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Rd., N.E., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (except frozen meats, meat products, and meat by-products), in vehicles equipped with mechanical refrigeration, from Los Angeles, San Jose and San Francisco, Calif., to points in Virginia, North Carolina, South Carolina, and West Virginia; (2) *Frozen Foods*, in vehicles equipped with mechanical refrigeration from those points in California on and west of a line beginning at the California-Nevada State line, and extending along U.S. Highway 66 to junction California Highway 58, thence along California Highway 58 to junction California Highway 99, thence along California Highway 99 to junction Interstate Highway 205, thence along Interstate Highway 205 to junction Interstate Highway 580, thence along Interstate Highway 580 to junction Interstate Highway 80, thence along Interstate Highway 80 to junction U.S. Highway 101, thence along U.S. Highway 101 to the Pacific Ocean to points in Virginia, West Virginia, and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line and extending along Interstate Highway 65, to the Indiana-Kentucky State line; (3) (a) *canned lemon juice*, in vehicles equipped with mechanical refrigeration, from Covina, Fresno, and Los Angeles, Calif., to points in Virginia, West Virginia, and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line and extending along Interstate Highway 65 to the Indiana-Kentucky State line, (b) *Citrus products*, frozen and non-frozen, in vehicles

equipped with mechanical refrigeration, from Ontario and Corona, Calif., to points in Virginia, West Virginia and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line, and extending along Interstate Highway 65 to the Indiana-Kentucky State line.

(c) *Canned vegetables,* in vehicles equipped with mechanical refrigeration, from Oxnard and Saticoy, Calif., to points in Virginia, West Virginia and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line and extending along Interstate Highway 65 to the Indiana-Kentucky State line, (d) *canned fish,* in vehicles, equipped with mechanical refrigeartion, from Los Angeles, Calif., to points in Virginia, West Virginia, and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line, and extending along Interstate Highway 65 to the Indiana-Kentucky State line, (e) *fresh fruit and vegetables,* in vehicles equipped with mechanical refrigeration when moving in same vehicle and at the same time as commodities the transportation of which is subject to economic regulation under Part II of the Interstate Commerce Act, from points in California and Litchfield, Park, Ariz., to points in Virginia, West Virginia, and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line, and extending along Interstate Highway 65 to the Indiana-Kentucky State line, (f) *cream,* sterilized in hermetically sealed containers and *cream,* aerated, in gas charged containers, in vehicles equipped with mechanical refrigeration, from Gustine, Calif., to points in Virginia, West Virginia and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line, and extending along Interstate Highway 65 to the Indiana-Kentucky State line, (g) *sterilized cream,* in hermetically sealed containers, and *cream* aerated, not frozen, in gas charged dispenser cans, in vehicles equipped with mechanical refigeration from Gustine, Calif., to Virginia, West Virginia, and those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line and extending along Interstate Highway 65 to the Indiana-Kentucky State line. The purpose of this filing is to eliminate the gateway of Atlanta, Ga.

No. MC 110098 (Sub-No. E69) (Correction), filed May 9, 1974, published in the FEDERAL REGISTER issue of October 17, 1974, and republished, as corrected, this issue. Applicant: ZERO REFRIGERATED LINES, P.O. Box 20380, San Antonio, Tex. 78220. Applicant's representative: T. W. Cothren (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, from the plant site and storage facilities of, or utilized by, American Beef Packers, Inc. in Pottawattami County, Iowa, and the plant site and storage facilities of, or utilized by, Great Plains Beef Co. at Council Bluffs, Iowa, to points in New Mexico, Arizona, that part of California on and south of a line beginning at the California-Nevada State line, thence along Interstate Highway 80 to junction California Highway 20, thence along California Highway 20 to the Pacific Ocean, and that part of Nevada on and south of U.S. Highway 91. The purpose of this filing is to eliminate the gateway of Dalhart, Tex.

NOTE.—The purpose of this correction is to more accurately describe the orgin territory.

No. MC 114868 (Sub-No. E30), filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 N. Nelson Street, Arlington, Va. 22201. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Household goods,* (1) between points in Michigan, on the one hand, and, on the other, points in Kentucky. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville. (2) between points in Michigan, on the one hand, and, on the other, points in Maryland within 125 miles of Washington, D.C. The purpose of this filing is to eliminate the gateway of Washington, D.C.

No. MC 114868 (Sub-No. E31), filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 N. Nelson Street, Arlington, Va. 22201. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Household goods,* (1) between points in Minnesota, on the one hand, and, on the other, Washington, D.C. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville. (2) between points in Minnesota, on the one hand, and, on the other, points in Kentucky. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville. (3) between points in Minnesota, on the one hand, and, on the other, points in Maryland within 125 miles of Washington, D.C. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville and Washington, D.C.

No. MC 114868 (Sub-No. E32), filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 N. Nelson Street, Arlington, Va. 22201. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Household goods,* (1) between points in Missouri, on the one hand, and, on the other, Washington, D.C. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville. (2) between points in Missouri, on the one hand, and, on the other, points in Tennessee. The purpose of this filing is to eliminate the gateway of points in Tennessee within 125 miles of Nashville. (3) between points in Missouri, on the one hand, and, on the other, points in West Virginia. The purpose of this filing is to eliminate the gateway of Washington, D.C. and points in Kentucky within 125 miles of Nashville. (4) between points in Missouri, on the one hand, and, on the other, points in Indiana within 10 miles north of the Ohio River. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville. (5) between points in Missouri, on the one hand, and, on the other, points in Ohio within 10 miles north of the Ohio River. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville. (6) between points in Missouri, on the one hand, and, on the other, points in Kentucky. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville. (7) between points in Missouri, on the one hand, and, on the other, points in Maryland. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville and Washington, D.C.

No. MC 114868 (Sub-No. E47), filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 N. Nelson Street, Arlington, Va. 22201. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Household goods,* (1) between points in Kentucky, on the one hand, and, on the other, points in Mississippi, (2) between points in Kentucky, on the one hand, and, on the other, points in South Carolina, (3) between points in Kentucky, on the one hand, and, on the other, points in Tennessee, and (4) between points in Kentucky on the one hand, and, on the other, points in Texas.

The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38223 Filed 12-28-76;8:45 am]

federal register

WEDNESDAY, DECEMBER 29, 1976

PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

COMMUNITIES ELIGIBLE FOR SALE OF INSURANCE AND FLOOD ELEVATION DETERMINATIONS

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2538]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Iowa	Appanoose	Moravia, town of	Dec. 14, 1976, emergency	Mar. 19, 1976	190021
New York	Orleans	Ridgeway, town of	do	Feb. 7, 1975 Jan. 16, 1976	361257A
*	*	*	*	*	*
Missouri	Stoddard	Bell City, city of	Dec. 15, 1976, emergency	Oct. 18, 1974 Nov. 21, 1975	290121A
Do	Cass	Freeman, city of	do	Nov. 8, 1974 Jan. 16, 1976	290060A
Nebraska	Platte	Lindsay, village of	do	Nov. 8, 1974 Dec. 5, 1975	310177A
New York	Clinton	Beekmantown, town of	do	Aug. 30, 1974	360160A
*	*	*	*	*	*
Georgia	Cowota	Moreland, town of	Dec. 16, 1976, emergency	Feb. 27, 1976 Apr. 18, 1976	130060
New York	Oswego	Oswego, town of	do	May 10, 1974 May 14, 1976	360657A
Do	Tioga	Spencer, village of	do		361471A
Oklahoma	Cotton	Randlett, town of	do	Aug. 13, 1976	400318
Pennsylvania	Monroe	Mt. Pocono, borough of	do	Jan. 24, 1975	420692
Georgia	Lumpkin	Dahlonega, city of	Dec. 17, 1976, emergency	June 28, 1974 Jan. 23, 1976	130129A
Louisiana	Jefferson	Westwego, city of	Apr. 27, 1973, emergency; Dec. 23, 1976, regular.	July 16, 1976	220094A
New Jersey	Union	Garwood, borough of	June 23, 1972, emergency; Feb. 1, 1977, regular	Feb. 1, 1977	340464
Ohio	Athens	Chauncey, village of	Dec. 17, 1976, emergency	June 21, 1974 Apr. 16, 1976	390017A
Do	Lawrence	Coal Grove, village of	do	June 14, 1974 May 21, 1976	390320A
Pennsylvania	Venango	Clintonville, borough of	do	Dec. 27, 1974	422512
Do	Delaware	Collingdale, borough of	Oct. 13, 1972, emergency; Feb. 2, 1977, regular	Apr. 30, 1976	420401
Do	Centre	Milesburg, borough of	June 17, 1975, emergency; Feb. 2, 1977, regular	Dec. 23, 1973 June 11, 1976	420264B
Do	Northampton	Palmer, township of	Oct. 22, 1971, emergency; Dec. 28, 1976, regular	Apr. 20, 1973	420728A
Do	Clinton	South Renovo, borough of	June 18, 1974, emergency; Feb. 2, 1977, regular	Feb. 2, 1977	420335

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, (34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: December 8, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37928 Filed 12-28-76;8:45 am]

[Docket No. FI-2537]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(b) or the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and

public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.*
Delaware	New Castle	Elsmere, town of	Oct. 2, 1974, emergency; Dec. 31, 1976, regular	Jan. 31, 1975	100023A
Indiana	Floyd	New Albany, city of	Oct. 1, 1971, emergency; Dec. 17, 1976, regular	Feb. 15, 1974 Jan. 30, 1976	180062B
Iowa	Warren	Lacona, city of	Dec. 6, 1976, emergency	Sept. 19, 1975	190752
Do	Emmet	Wallingford, city of	do	Sept. 26, 1975	190821
Minnesota	Lincoln	Tyler, city of	do	May 3, 1974	270225
Nebraska	Cheyenne	Potter, village of	do	Sept. 5, 1975	310311
New Jersey	Cape May	Upper, township of	Jan. 29, 1971, emergency; Dec. 10, 1976, regular	Dec. 6, 1974	340159A
Ohio	Cuyahoga	Mayfield, village of	Dec. 17, 1971, emergency; Dec. 24, 1976, regular.	Nov. 23, 1973 June 18, 1976	390116B
Pennsylvania	Clearfield	Irvona, borough of	Dec. 6, 1976, emergency	Apr. 12, 1974	420008A
Alabama	Dale	Pinckard, town of	Dec. 8, 1976, emergency	Jan. 24, 1975	010249
Louisiana	Acadia	Morse, village of	do	Nov. 23, 1973 Mar. 12, 1976	220007A
Nebraska	Fillmore	Fairmont, city of	do	Sept. 12, 1975	310067
North Dakota	Ramsey	Crary, city of	do	Nov. 15, 1974	380053
Pennsylvania	Berks	Laureldale, borough of	do		[1] 422646
Do	Montgomery	Cheltenham, township of	Nov. 24, 1976, suspension withdrawn	June 28, 1974 Apr. 11, 1975	420056B
North Carolina	Beaufort	Washington Park, town of	do	Feb. 9, 1973	370268A
Arkansas	Miller	Texarkana, city of	Sept. 1, 1972, emergency; Dec. 31, 1976, regular	May 24, 1974 Oct. 10, 1975	050137B
Georgia	Chatham	Vernonburg, town of	Mar. 10, 1971, emergency; July 27, 1973, regular; Jan. 15, 1976, suspended; Dec. 3, 1976, reinstated.	July 27, 1973 July 1, 1974 Oct. 31, 1975	135165A
New York	Oswego	Parish, town of	Dec. 9, 1976, emergency	Dec. 27, 1974	361357
Ohio	Lawrence	Hanging Rock, village of	do	Mar. 23, 1975	390650
Oklahoma	Garvin	Pauls Valley, city of	do		400246
Do	Atoka	Stringtown, town of	do	Aug. 13, 1976	400329
Utah	Salt Lake	Midvale, city of	do	Sept. 26, 1975	490211
Washington	Kittitas	South Cle Elum, city of	do	July 11, 1975	530263
Michigan	Lenawee	Blissfield, village of	Dec. 10, 1976, emergency	Sept. 12, 1975	260630
Oklahoma	Beckham	Sayre, city of	do	June 11, 1976	400441
Pennsylvania	Allegheny	Sewickley Hills, borough of	do		420072

[1] New.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 23, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: December 3, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37929 Filed 12-28-76;8:45 am]

[Docket No. FI-2566]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by Section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
Michigan	Kalamazoo	Charleston, township of	Dec. 20, 1976, emergency	July 23, 1975	260139
Ohio	Carroll	Sherrodsville, village of	do	Aug. 9, 1974 June 4, 1976	390054A
Washington	King	Skykomish, town of	do	Feb. 14, 1975	530075
Iowa	Greene	Jefferson, city of	Dec. 23, 1976, emergency	Aug. 29, 1975	190098
Maine	Hancock	Mount Desert, town of	do	Jan. 17, 1975	230087
Do	do	Sedgwick, town of	do	Jan. 24, 1975	230091
Missouri	Gentry	Darlington, village of	do	Dec. 13, 1974	290149
Do	Putnam	Unionville, city of	do	Aug. 13, 1976	290201
Oklahoma	Mayes	Spavinaw, town of	do	do	400127
Pennsylvania	Berks	North Heidlberg, township of	do	Sept. 13, 1974 Sept. 24, 1976	420690A
Kansas	Jackson	Holton, city of	Dec. 27, 1976, emergency	Feb. 22, 1974	200141A
Minnesota	Houston	Brownsville, city of	do	Oct. 18, 1974 July 2, 1976	270191A
Missouri	Stoddard	Essex, city of	do	Sept. 6, 1974 Dec. 26, 1975	290127A
North Dakota	Cass	Barnes, township of	do		380053

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969), as amended 39 FR 2787, Jan. 24, 1974.)

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38065 Filed 12-28-76;8:45 am]

[Docket No. FI-2290]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Eau Claire, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Eau Claire, Wisconsin under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 203 South Farwell, Eau Claire, Wisconsin 54701.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Eau Claire River	Interstate Highway 53	797	50	50
	Dewey St.	791	50	100
	Barstow St.	787	650	400
Chippewa River	Lilac St.	805	(1)	150
	Upstream side of Dells Dam	800	200	100
	Madison St.	787	650	1,100
	Grand Ave.	785	500	650
	Lake St. (Veterans Memorial Bridge)	784	900	100
	U.S. Highway 12	779	1,800	250
	Highways 37 and 85 (Shore St.)	777	500	3,500
	Interstate Highway 94	776	2,700	(1)

[1] Outside corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-37919 Filed 12-28-76;8:45 am]

[Docket No. FI-2532]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Milford, Delaware

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Milford, Delaware under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the

National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Offices, Milford, Delaware 19963.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Mullet Run	U.S. 113 [1]	24	120	230
Mispillion River	do. [1]	18	570	550
	Church St.	10	260	540
	Washington St.	9	60	320
Presbyterian Branch	U.S. 113 [1]	22	720	90
	Woodland Dr.	20	110	120
	Lakelawn Dr.	17	70	40

[1] Upstream side.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 19, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-37920 Filed 12-28-76;8:45 am]

[Docket No. FI-2141]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Danbury, Connecticut

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Danbury, Connecticut under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 155 Deer Hill Avenue, Danbury, Connecticut 06810.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Still River	U.S. 7	288	60	300
	I-84	293	70	60
	Old Newton Rd	298	290	40
	Newton Rd	323	20	20
	Casper St	367	75	75
	White St	374	40	40
	Penn Central Railroad	415	20	80
	do	450	20	30
Lineldin Brook	Newtown Rd	293	710	370
Sympaug Brook	Shelter Rock Rd	356	710	370
Padanaram Brook	Crosby St	374	415	290
	Balmforth Ave	387	60	20
	Hayestown Ave	393	20	30
	Padanaram Rd	405	20	30
	Golden Hill Rd	442	95	10
Kohanya Brook	North St	388	260	25
	Thorp St. extension	391	100	260
	Kohanya St	429	140	120

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: October 22, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-37926 Filed 12-28-76;8:45 am]

[Docket No. FI-845]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Elma, Erie County, New York

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Town of Elma, Erie County, New York under § 1917.9 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.9(a), the Administrator has resolved the appeals presented by the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Town Hall, Elma.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Buffalo Creek	Transit road (at northwest corporate limit.)	659	1,050	125
	Blossom Rd	660	100	1,100
	Bowen Rd	715	25	75
	Girdle Rd	739	125	80
	Bullis Rd	764	125	40
	Rice Rd. (extended across creek)	780	500	325
	Jamison Rd	821	75	120
	At southeast corporate limit	832	90	1,060
Cazenovia Creek	Transit road (at west corporate limit)	685	100	180
	North Rd	710	150	300
	Kinsley Rd. (extended across creek)	727	290	275
	At southern corporate limit	770	150	10
Little Buffalo Creek	Northern corporate limit		180	780
	Clinton St		440	710
	Eastern corporate limit		1,160	200

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-37927 Filed 12-28-76;8:45 am]

federal register

WEDNESDAY, DECEMBER 29, 1976

PART III

DEPARTMENT OF THE TREASURY

Internal Revenue Service

■

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

■

EMPLOYEE BENEFIT PLANS

Proposed Class Exemption and Hearing

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[26 CFR Part 54; 29 CFR Part 2550]

EXEMPTIONS FOR PROVISION OF SERVICES AND OFFICE SPACE TO EMPLOYEE BENEFIT PLANS, INVESTMENT OF PLAN ASSETS IN BANK DEPOSITS, AND PROVISION OF BANK ANCILLARY SERVICES TO PLANS, AND TRANSITIONAL RULE FOR PROVISION OF SERVICES TO PLANS; AND PROPOSED CLASS EXEMPTION REQUESTED BY THE NATIONAL ASSOCIATION OF PENSION CONSULTANTS AND ADMINISTRATORS, INC., THE INVESTMENT COMPANY INSTITUTE, AND OTHERS

Hearing on Notices of Proposed Rulemaking and Proposed Class Exemption

Proposed regulations under sections 4975(d) (2), (4), (6), and (10) of the Internal Revenue Code of 1954 (the Code) and section 2003(c) (2) (D) of the Employee Retirement Income Security Act of 1974 (the Act), and sections 408 (b) (2), 408(b) (4), 408(b) (6), 408(c) (2) and 414(c) (4) of the Act, appeared in the FEDERAL REGISTER for July 30, 1976 (41 FR 31838, 31874). These proposed regulations relate to the provision of services and office space to employee benefit plans, the investment of plan assets in bank deposits, the provision of bank ancillary services to plans, and the transitional rule for the provision of services to plans until June 30, 1977.

By notice appearing in this issue of the FEDERAL REGISTER, the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as "the Agencies") have also announced the pendency of a proposed class exemption involving, among other things, the receipt of insurance and mutual fund sales commission by pension consultants, insurance agents and brokers and mutual fund principal underwriters and their affiliates who are fiduciaries of service providers with respect to employee benefit plans.

A public hearing on the provisions of the proposed regulations and the proposed class exemption will be held on February 14, 1977, beginning at 10:00 a.m. in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

In addition, the comment period with respect to the proposed regulations described above, which terminated on September 23, 1976, is hereby extended to January 27, 1977.

Proposed regulation 26 CFR 54.4975-6 (b) (1), relating to the statutory exemption for the provision of office space or services to plans set forth in section 4975(d) (2) of the Code, states that:

> It (the exemption in section 4975(d) (2)) does not provide an exemption from section 4975(c) (1) (E) (relating to fiduciaries dealing with the income or assets of plans in their own interest or for their own account) or from section 4975(c) (1) (F) (relating to fiduciaries receiving consideration for their own personal account from any party dealing with a plan in conection with a transaction involving the income or assets of the plan).

Thus, a person who is a fiduciary with respect to a plan may not provide additional services to the plan and receive any compensation or other consideration in connection therewith, unless such provision of services is arranged and approved on behalf of the plan by a fiduciary who is independent of and unrelated to the fiduciary providing such services, who is not a party to such arrangement for the provision of services, who does not receive any compensation or other consideration with respect to such provision of services, an dwho has no other interest with respect to the transaction that might affect the exercise of such fiduciary's best judgment as a fiduciary.

Proposed regulation 29 CFR 2550.408b-2(b) (1) contains a similar statement with respect to section 408(b) (2) of the Act (i.e., that it does not provide an exemption from the prohibitions of sections 406(b) (1), (2) and (3) of the Act).

The many comments received on these proposed regulations suggest the need for further explanation. The following points are offered.

First, a person is a "fiduciary" if that person exercises any authority or control regarding management or disposition of plan assets, or has or exercises discretionary authority, control or responsibility for plan administration or management, as described in sections 3(21) (A) (i) and (iii) of the Act and 4975(e) (3) (A) and (C) of the Code, or if that person renders investment advice to the plan for a fee or other compensation, direct or indirect, as defined in sections 3(21) (A) (ii) of the Act and 4975(e) (3) (B) of the Code, and the regulations thereunder (29 CFR 2510.3-21 and 26 CFR 54.4975-9.) In this connection, as noted in the Conference Report accompanying the Act (H.R. Rep. 93-1280, 93d Cong. 2d Sess. (1974) 323), there will be situations in which a person who renders advisory or consulting services to a plan will be a fiduciary, although not formally named as such, because, by virtue of his or her actions, he or she exercises discretionary authority or control with respect to the management or administration of such plan or has authortiy or control regarding the assets of the plan.

Second, if a person has or exercises authority, control, or responsibility over plan management or administration or over the disposition of plan assets sufficient to make such person a fiduciary respecting such plan, sections 406(b) (1) of the Act and 4975(c) (1) (E) of the Code prohibit that person from exercising such authority, control, or responsibility respecting such plan so as to deal with the income or assets of the plan in his or her own interest or for his or her own account.

Third, the rule in the proposed regulations cited above was not intended to mean that a fiduciary can exercise the authority, control or responsibility that makes such person a fiduciary to benefit himself or herself, even if a second fiduciary, who is independent and has no personal interest in the matter, approves the first fiduciary's undertakings. The first fiduciary is still subject to the prohibition contained in sections 406(b) of the Act and 4975(c) (1) (E) and (F) of the Code against the exercise of such fiduciary's powers to deal with plan income or assets for his or her own benefit or the benefit of others, notwithstanding the actions of a second fiduciary.

Fourth, sections 406(b) (1) of the Act and 4975(c) (1) (E) of the Code do not prohibit a person from providing additional services to a plan merely because that person is a fiduciary. A fiduciary may not use the authority, control or responsibility that makes such person a fiduciary to, for example, authorize the retention of himself or herself to provide such additional services. However, if such fiduciary does not have or exercise any such authority, control or responsibility in connection with the retention of himself or herself to provide such additional services, the retention of such fiduciary to provide such additional services to the plan by a second fiduciary does not constitute a violation by the first fiduciary of the prohibition against fiduciary self-dealing contained in sections 406(b) (1) of the Act and 4975(c) (1) (E) of the Code.

Examples of the above points in operation are as follows:

Example 1. On January 1, 1978, F, a fiduciary of plan P with overall authority over the administration of P, acting on behalf of P, successfully negotiates with I, a professional investment manager in which F has no interest which might adversely affect the exercise of F's judgment as a fiduciary, a contract under which I will render investment advice to P of a type which causes I to be a fiduciary of P under sections 3(21) (A) (ii) of the Act and 4975(e) (3) (B) of the Code. Thereafter F, acting on behalf of P, negotiates a second contract with I under which I will perform bookkeeping services for P for a fee. The making of such a contract does not constitute a prohibited transaction within the meaning of sections 406(b) (1) of the Act and 4975(c) (1) (E) of the Code because I did not use any of the authority, control or responsibility which makes I a fiduciary to cause the plan to retain I to perform the bookkeeping services.

Example 2. On January 1, 1976, F, a fiduciary of plan P, which covers F's employees, commences providing bookkeeping services at no charge to P. The provision of such services does not constitute a prohibited transaction within the meaning of sections 406(b) (1) of the Act and 4975(c) (1) (E) of the Code because F has received no compensation or other consideration with respect to the provision of such services.

Example 3. C, a consultant to plan P, is, under the particular facts and circumstances, a fiduciary with respect to P. On January 1, 1978, C recommends to D, a named trustee of the plan with discretion over the management and disposition of plan assets, that the plan purchase an insurance policy from insurance company U, which is not a party in interest or disqualified person with respect to P. C thoroughly explains the reasons for the recommendation, and makes a full disclosure concerning the fact that C will receive a commission from the sale of such policy from U. D considers the recommendation and approves the purchase of the policy by the plan. C receives a commission. Under such circumstances, C has engaged in a prohibited transaction under sections 406(b) (1) of the Act and 4975(c) (1) (E) of the Code. However, if the pending class exemption which

appears elsewhere in this issue of the FEDERAL REGISTER is granted, the transaction would be exempt from the prohibited transaction provisions of section 406 of the Act and section 4975 of the Code if the transaction satisfies the conditions set forth in the exemption.

Example 4. Assume the same facts as in Example 3 except that the nature of C's relationship with the plan is not such that C is a fiduciary of P. The purchase of the insurance policy would not be a prohibited transaction under sections 406(b)(1) of the Act and 4975(c)(1)(E) of the Code.

Any interested person who desires to present oral comments at the hearing and who wishes to be assured of being heard should submit a statement to that effect, an outline of the topics he wishes to discuss, and the time he wishes to devote, by 3:30 p.m. on February 10, 1977. The statement and outline should be submitted to the Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room C-4526, Washington, D.C. 20216, attention, application D-183 Hearing. An agenda will then be prepared containing the order of presentation of oral comments and the time allotted to such presentation. Ordinarily, a period of 10 minutes will be the time allotted to each person for making his oral comments. Information with respect to the contents of the agenda may be obtained on February 11, 1977, by telephoning (Washington, D.C.) 202-523-8881.

At the conclusion of the presentations of comments by persons listed in the agenda, to the extent time permits, other comments will be received. The public hearing will be transcribed.

A person wishing to make oral comments at the hearing may do so without filing written comments. Persons making oral comments should be prepared to answer questions regarding information brought forth on their comments (including written comments, if any).

Signed at Washington, D.C., this 22d day of December, 1976.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

[FR Doc.76-37232 Filed 12-22-76;8:45 am]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

DEPARTMENT OF THE TREASURY

Internal Revenue Service

EMPLOYEE BENEFIT PLANS

[Application Nos. D-183, D-301, D-419, D-459, D-466 and D-473]

Notice of Pendency of Proposed Class Exemption Requested by the National Association of Pension Consultants and Administrators, Inc., the Investment Company Institute, and Others.

Notice is hereby given of the pendency before the Department of Labor (the Department) and the Internal Revenue Service (the Service) of a proposed class exemption from the restrictions of sections 406(a)(1) (A) through (D) and 406(b) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) of the Code. The pending class exemption was requested in applications submitted by the National Association of Pension Consultants and Administrators, Inc. (NAPCA) (D-183); jointly by the American Council of Life Insurance (ACLI) [1], the National Association of Life Underwriters (NALU) and the Association for Advanced Life Underwriting (AALU) (D-301); the Investment Company Institute (ICI) (D-419 and D-466); jointly by Marsh & McLennan Companies, Inc. and Johnson & Higgins (M & M) (D-459); and jointly by Investors Diversified Services, Inc. and American General Capital Distributors, Inc. (D-473).

The pending class exemption would exempt from the prohibited transactions provisions: (1) The receipt of sales commissions from an insurance company, directly or indirectly, by an insurance agent or broker or a pension consultant [2] in connection with the purchase of insurance contracts or annuities with employee benefit plan assets when such insurance agent or broker or pension consultant is a service provider or a fiduciary with respect to the plan; (2) the receipt of sales commissions by a mutual fund principal underwriter in connection with the purchase of mutual fund shares with plan assets when such principal underwriter is a plan fiduciary or service provider; (3) the execution by an insurance agent or broker or a pension consultant of the purchase of insurance with plan assets from an insurance company when such insurance agent or broker or pension consultant is a service provider or fiduciary with respect to the plan and, in connection with the execution of such transaction, is acting as the agent of the insurance company; (4) the purchase of insurance with plan assets from an insurance company which is a party in interest or disqualified person (including a fiduciary) with respect to the plan solely by reason of providing services, directly or indirectly, to the plan (e.g., in connection with an insurance company-sponsored master or prototype plan which has been adopted as the plan) or by reason of a relationship described in section 3(14) (G), (H) or (I) of the Act or section 4975(e)(2) (G), (H) or (I) of the Code to an insurance agent or broker or pension consultant who provides services to or is a fiduciary with respect to the plan; and (5) the purchase of mutual fund shares with plan assets from, or the sale of mutual fund shares to, a principal underwriter with respect to the mutual fund, where the principal underwriter or mutual fund, or both, are parties in interest or disqualified persons (including fiduciaries) with respect to the plan by reason of providing services, directly or indirectly, to the plan (e.g., in connection with a mutual fund-sponsored master or prototype plan which is adopted as the plan).

The applications for class exemption were filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

Numerous applications have also been received for individual exemptions covering transactions of the type described in this proposed class exemption. All such transactions will be exempted if they satisfy the terms and conditions of the proposed class exemption. As stated in section 3.04 of ERISA Proc. 75-1 and Rev. Proc. 75-26, an application for an individual exemption will not ordinarily be considered separately if a class exemption which may encompass the transaction described in the application for an individual exemption is under consideration by the Department and the Service. Accordingly, the agencies are notifying directly each applicant for an individual exemption of the fact that such applicant's application is not being considered separately from this proposed class exemption, that such application will ordinarily be closed, and, therefore, that such applicant's comments with respect to this pending class exemption are sought by the agencies.

PREAMBLE

Summary of representations. The applications contain representations with regard to the pending class exemption, which are summarized below. Interested persons are referred to the applications on file with the Department and the Service for the complete representations of the applicants.

Pension consultants. The applications submitted by NAPCA and by Marsh & McLennan Companies, Inc. and Johnson & Higgins request class exemptions to permit pension consultants who are fiduciaries with respect to plans (as defined in section 3(21) of the Act and section 4975(e)(3) of the Code) to receive commissions from insurance companies in connection with the purchase of insurance by such plans. The applicant's represent that pension consultants provide a wide variety of administrative, consulting and advisory services to plans. These services include, among others; advice on the cost of various types of benefits; advice on the structure of plan management and operations; advice on the types of funding media available to provide particular plan benefits; actuarial evaluations; designing funding media, plan investment objectives and policies, administrative policies, forms, etc.; and numerous administrative support services. The provision of some of these services in individual cases could cause a pension consultant to become a plan fiduciary.

Customarily, pension consultants are compensated for the provision of their services to plans through the receipt of fees from plans, plan sponsors or other persons or by means of the receipt of initial and renewal sales commissions on the sale of insurance products to such plans. The applicants represent that if and when pension consultants are plan fiduciaries, a question exists whether the receipt of insurance sales commissions by such persons violates section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code, which prohibit plan fiduciaries from receiving consideration for their own personal accounts from any party (e.g., an insurance company) dealing with the plan in connection with a transaction involving plan assets. A question also exists whether such a pension consultant, who is also a plan fiduciary, would be in violation of section 406(b)(1) and (2) of the Act and section 4975(c)(1)(E) of the Code when acting as agent of an insurance company in connection with the purchase of insurance by the plan. Section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code prohibit a plan fiduciary from dealing with the income or assets of the plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a plan fiduciary from representing a party whose interests are adverse to the interests of the plan or its participants and beneficiaries in connection with a transaction involving the plan.

The applicants further represent that the provision of services to plans by pension consultants is exempt from the prohibited transaction provisions pursuant to section 508(b)(2) of the Act and section 4975(d)(2) of the Code, and that the receipt of insurance sales commissions, and the sale of insurance to plans, by most pension consultants when they are plan fiduciaries, is exempt until June 30, 1977 pursuant to the transitional rules of sections 414(c)(4) and 2003(c)(2)(D) of the Act, as interpreted in ERISA IB 76-1 and IRS TIR-1329 (issued December 31, 1974).

The applicants state that they believe that if their requested exemptions are not granted, the normal business prac-

[1] The American Council of Life Insurance is the successor to the American Life Insurance Association.

[2] All references to the terms "insurance agent or broker", "pension consultant", "insurance company", "principal underwriter", "fiduciary" and "service provider" include such persons and any affiliates thereof. The term "affiliate" is defined in section IV (d) of the pending class exemption, and would include, for example, an employee of an insurance agency or pension consulting firm or a corporation of which an insurance agent or pension consultant is an employee.

tices of pension consultants will be restricted, and that this will result in a constriction in the variety of consulting and administrative services that would be available to plans. The applicants represent that this would be highly disruptive of plan operations and would lead to increased plan administrative and operating costs.

Insurance agents and brokers. The applications submitted by NAPCA, M & M, and jointly by the ACLI, NALU and AALU request a class exemption to permit life insurance agents and brokers to continue to sell insurance to plans with respect to which such agents or brokers are fiduciaries or otherwise parties in interest or disqualified persons by reason of the consultative and advisory services performed for plans by such agents or brokers.

In this connection, the applicants have also requested that the Department and the Service rule that the normal sales presentation and recommendations made by an insurance agent or broker to a plan or a plan fiduciary will not be considered to constitute the rendering of investment advice for a fee so as to classify such agent or broker as a fiduciary.[3] However, the applicants represent that, even if their requested ruling is issued, the consultative or advisory services performed for plans by insurance agents and brokers are such that in particular cases the agent or broker would become a plan fiduciary.

In this regard, the applicants represent that insurance agents and brokers customarily provide a variety of administrative and consultative services to plans, besides the sale of insurance products. Among other things, these services include: describing available funding media; advice on procedures for obtaining Service approval of plans; communicating plan details to employees and obtaining necessary employee information for initial plan operation; actuarial services; preparation of plan reports and plan operating procedures; and advice on termination procedures. If the plan is not funded through insurance company products, the agent or broker will normally be compensated through the payment of a fee. If insurance products are involved, the agent or broker is fully or partially compensated through commissions on the sale of insurance to the plan. Such commissions are paid by the insurance companies whose products are sold to the plan.

The applicants further represent that where the agent or broker is a plain fiduciary, such insurance sales commissions could be considered to constitute consideration for the agent's or broker's own personal account from a party (i.e., the insurance company) dealing with the plan in connection with a transaction involving the assets of the plan, in violation of section 406(b) (3) of the Act and section 4975(c) (1) (F) of the Code. In addition, such agent or broker could be deemed to be self-dealing in violation of section 406(b) (1) of the Act and 4975(c) (1) (E) of the Code and to be acting on behalf of an adverse party in connection with such transactions in contravention of section 406(b) (2) of the Act.

Although the applicants state that they believe that many of the "prohibited transactions" described above are exempt from the prohibitions and excise taxes of the Act and the Code for the period from January 1, 1975 through June 30, 1977 by reason of the transitional rules of sections 414(c) (4) and 2003(c) (2) (D) of the Act, they represent that a class exemption is necessary to permit these transactions to continue subsequent to June 30, 1977. In addition, because the transitional rules of section 414(c) (4) and 2003(c) (2) (D) of the Act are not available for agents and brokers who are not considered to have furnished the type of services involved as of June 30, 1974, the applicants have requested that the pending class exemption be effective as of January 1, 1975, the effective date of the prohibited transaction provisions of the Act and the Code.

In support of their exemption request, the applicants represent that, without an exemption, insurance agents and brokers will be precluded from receiving their customary form of compensation for the furnishing of services to plans (i.e., sales commissions) and would, therefore, be compelled to curtail the provision of many of the services that they currently provide to plans. The applicants contend that these developments would severely disrupt long established business practices and relationships and would create hardships for plans, plan sponsors and plan participants. The applicants note that such hardships would be most severe for insured plans of small employers which have commonly relied heavily on the services of insurance agents and brokers because the limited resources of such plans do not permit them to retain consultants.

For essentially the same reasons outlined above, the applicants have also requested an exemption to permit an insurance company to sell insurance to a plan when such insurance company is a party in interest or disqualified person (including a fiduciary) with respect to the plan by reason of providing services, directly or indirectly, to the plan or by a reason of a relationship described in section 3(14) (G), (H) or (I) of the Act or section 4975(e) (2) (G), (H) or (I) of the Code to an insurance agent or broker who provides services to or is a fiduciary with respect to the plan.

Mutual fund principal underwriters. On October 31, 1975, notice was published in the FEDERAL REGISTER (40 FR 50845) of the granting of class exemptions (Prohibited Transaction Exemption 75–1) for certain transactions involving plans and certain broker-dealers, reporting dealers and banks. One of these class exemptions permits, among other things, the purchase and sale of securities, including mutual fund shares, by a plan from or to a broker-dealer which is a party in interest or disqualified person (other than a fiduciary) with respect to the plan by virtue of providing services to the plan. This class exemption also covers, as of January 1, 1975, the purchase and sale of mutual fund shares by a plan from or to a broker-dealer which is a plan fiduciary, provided that such broker-dealer is not a principal underwriter for, or affiliated with, such mutual fund, and the receipt of commissions by such fiduciary/broker-dealer is in connection with the purchase of mutual fund shares by plans.

The applications submitted by the ICI and by Investors Diversified Services, Inc. and American General Capital Distributors, Inc., request a class exemption to permit mutual fund principal underwriters (and their affiliates) to purchase or sell shares of the mutual fund from and to plans with respect to which such principal underwriters are fiduciaries, and to permit such fiduciary principal underwriters (and their affiliates) to receive sales commissions in connection with such plan purchases of mutual fund shares. The requested exemption would cover not only the prohibitions of sections 406(b) of the Act and section 4975 (c) (1) (E) and (F) of the Code, but also the provisions of section 406(a) (1) (A) through (D) of the Act and sections 4975(c) (1) (A) through (D) of the Code, which prohibit, among other things, the sale of property between a plan and a party in interest or disqualified person. The applicants represent that if their requested exemption is granted, it will remove unwarranted discrimination between the sale of mutual fund shares effected by broker-dealers who are plan fiduciaries and who are unrelated to mutual funds (which sales are covered by Prohibited Transaction Exemption 75–1) and sales made directly by mutual fund principal underwriters who are plan fiduciaries.

In this regard, the applicants have made a request, similar to that made in the NAPCA, M&M and ACLI, NALU and AALU applications, that the Department and the Service rule that the normal sales presentation and recommendations made by a mutual fund principal underwriter or an employee thereof to a plan or a plan fiduciary will not be considered to constitute the rendering of investment advice for a fee so as to classify such person as a fiduciary.

Notwithstanding the issuance of such a ruling, the applicants represent that a class exemption is still necessary for those situations in which a mutual fund principal underwriter or an affiliate thereof is a plan fiduciary. In support of this request, the applicants note that the distribution of mutual fund shares to plans and other investors through principal underwriter direct sales forces has been a standard and customary practice for over forty years and that the activi-

[3] For a discussion of this question, see the section of the Preamble entitled "Definition of Fiduciary," infra. reports and plan operating procedures; and advice on termination procedures. If the plan is not funded through insurance company products, the agent or broker will normally be compensated through the payment of a fee. If insurance products are involved, the agent or broker is fully or partially compensated through commissions on the sale of insurance to the plan. Such commissions are paid by the insurance companies whose products are sold to the plan.

ties of mutual funds, their investment advisers and their principal underwriters, and the sale of mutual fund shares to investors, is closely regulated by the Securities and Exchange Commission under the Investment Company Act of 1940, the Securities Act of 1933, the Investment Advisers Act of 1940, and the Securities Exchange Act of 1934.

The applicants also represent that mutual fund principal underwriter direct sales forces normally recommend mutual fund shares as the funding medium for small employee benefit plans which can neither afford to retain professional investment managers nor otherwise obtain diversification of assets. These sales forces often recommend and sell mutual fund shares to employee benefit plans which are not readily serviced by regular retail broker-dealers or other financial institutions. If the requested exemption is not granted, the applicants represent that these plans would be foreclosed from continuing to receive these services, and that this would result in substantial hardship and economic loss for such plans.

For essentially the same reasons outlined above, the ICI has also requested, in Application D–466, an interpretation of the applicable provisions of the Act and the Code or, in the alternative, an exemption to permit the purchase or sale of mutual fund shares from or to a principal underwriter with respect to the mutual fund, where the principal underwriter or mutual fund, or both, may be parties in interest or disqualified persons (including fiduciaries) with respect to the plan because they may be considered to be providing services, directly or indirectly, to the plan (e.g., in connection with a mutual fund-sponsored master or prototype plan which is adopted as the plan).

Regarding Application D–466 filed by the ICI, and the joint application of the ACLI, NALU and AALU insofar as it relates to the question of whether a sponsor of a master or prototype plan may be considered to be a service provider or fiduciary with respect to the plan, the Department and the Service wish to emphasize that the proposal of a class exemptions to permit the purchase or sale of mutual fund shares or insurance contracts or annuities from or to the principal underwriter or insurance company when the principal underwriter, mutual fund or insurance company is the sponsor of the master or prototype plan is not intended to reflect a decision on this question by the Department and the Service. Rather, the class exemption, to the extent that it covers the master and prototype plan situation, is proposed, in part, to eliminate the adverse effects under the prohibited transaction provisions for plans and their participants and beneficiaries that may be caused by any uncertainties regarding the resolution of this question. Thus, to the extent that an insurance company, mutual fund or principal underwriter of a mutual fund may be considered to be a service provider or fiduciary as a result of services performed in connection with a master or prototype plan that it sponsors, the exemption provides relief from the prohibited transaction provisions of section 406 of the Act and section 4975(c)(1) of the Code for the purchase of insurance contracts or annuities from the insurance company or the purchase or sale of mutual fund shares from or to the mutual fund or principal underwriter.

Definition of "Fiduciary." Several of the applicants for class exemption have requested that the Department and the Service rule that the normal sales presentation and recommendations made to a plan or a plan fiduciary by an insurance agent or broker, pension consultant, or a mutual fund principal underwriter, or an employee thereof, will not be considered to constitute the rendering of investment advice for a fee so as to classify such agent or broker, pension consultant, or principal underwriter, or employee thereof, as a "fiduciary." Section 3(21)(A)(ii) of the Act and section 4975(e)(3)(B) of the Code define the term "fiduciary" with respect to a plan as a person who "renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so."

By notices published in the FEDERAL REGISTER (40 FR 50840, 50842) on October 31, 1975, the Service and the Department adopted regulations, 26 CFR 54.4975–9(c) and 29 CFR 2510.3–21(c), clarifying the applicability of the definition of the term "fiduciary" to persons who render investment advice to plans. As here relevant, those regulations provide:

> (c) *Investment Advice.* (1) A person shall be deemed to be rendering "investment advice" to an employee benefit plan * * * only if:
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> (i) Such person renders advice to the plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; and
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> (ii) Such person either directly or indirectly (e.g., through or together with any affiliate)—
>
> (A) Has discretionary authority or control, whether or not pursuant to agreement, arrangement or understanding, with respect to purchasing or selling securities or other property for the plan; or
>
> (B) Renders any advice described in paragraph (c)(1)(i) of this section on a regular basis to the plan pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments.

The advice and recommendations made to plans and plan fiduciaries by insurance agents and brokers, pension consultants, and mutual fund principal underwriters (or their employees) regarding plan purchases of insurance contracts or annuities or mutual fund shares come within the type of advice described in paragraph (c)(1)(i) of the regulations cited above and could constitute "investment advice" so as to classify the persons who furnish such advice as "fiduciaries" if it is rendered under the circumstances described in either paragraph (c)(1)(ii)(A) or paragraph (c)(1)(ii)(B) of such regulations. A determination whether such advice constitutes "investment advice" under these regulations and section 3(21)(A)(ii) of the Act and section 4975(e)(3)(B) of the Code can be made only on a case-by-case basis.

In addition, the Department and the Service stated in the preamble sections of the notices announcing the adoption of the regulations that, until a more definitive statement is issued, the phrase "fee or other compensation, direct or indirect" for the rendering of investment advice for purposes of section 3(21)(A)(ii) of the Act and section 4975(e)(3)(B) of the Code should be deemed to include all fees or other compensation incidental to the transaction in which the investment advice to the plan has been rendered or will be rendered, and may therefore include insurance and mutual fund sales commissions. The Department and the Service have not modified or revised this position, notwithstanding the contrary views expressed in several of the applications for class exemption.

Exemption for services. Section 408(b)(2) of the Act and section 4975(d)(2) of the Code provide an exemption from the prohibited transaction provisions for, as here relevant, the provision of services to plans by parties in interest and disqualified persons if certain conditions are met. By notices published in the FEDERAL REGISTER on July 30, 1976 (41 FR 31838, 31874), the Service and the Department proposed regulations, 26 CFR 54.4975–6 and 29 CFR 2550.408b–2, designed to clarify the scope and conditions of these statutory exemptions.

Among other things, the proposed regulations indicate that the statutory exemptions cover all parties in interest and disqualified persons, including plan fiduciaries. Thus, the services provided to plans by persons who are insurance agents or brokers, pension consultants, or mutual fund principal underwriters would be covered by the exemption set forth in section 408(b)(2) of the Act and section 4975(d)(2) of the Code, whether or not such persons are plan fiduciaries, if the arrangements under which such persons provide services to plans satisfy the provisions of the regulations under sections 408(b)(2) of the Act and 4975(d)(2) of the Code. To the extent that an insurance agent or broker, pension consultant, or mutual fund principal underwriter is not a fiduciary, he or she may rely on the statutory exemption contained in sections 408(b)(2) of the Act and 4975(d)(2) of the Code or on this exemption, if granted.

The proposed regulations also provide that the statutory exemption covers only the furnishing of services and not the prohibitions against certain fiduciary conduct described in section 406(b) of the Act and section 4975(c)(1)(E) and

(F) of the Code that might be present in the arrangement for the furnishing of services to a plan. The proposed regulations indicate, however, that if the arrangements for the provision of services to a plan by a fiduciary are arranged and approved on behalf of the plan by a second fiduciary who is independent of and unrelated to the fiduciary providing the services, the fiduciary/service provider would not be considered to be dealing with plan assets in his own interest or for his own account in contravention of section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code. Interested persons are directed, however, to the notice of hearing on the proposed regulations under section 408(b)(2) of the Act and section 4975(d)(2) of the Code and this pending class exemption, which notice appears elsewhere in this issue of the FEDERAL REGISTER, for a further explanation of the views of the Department and the Service with respect to the effect of the approval of a second fiduciary in situations where the fiduciary/service provider might be considered to be dealing with plan assets in his own interest or for his own account.

In connection with this notice of pendency of exemption, the Department and the Service wish to emphasize that satisfaction of the conditions of the pending class exemption will not permit a breach of the general fiduciary responsibility provisions of section 404 of the Act or excuse a violation of the "exclusive benefit of employees" requirement contained in section 401(a) of the Code. Such breach or violation might occur, for example, if a fiduciary with respect to the plan recommends or causes the plan to select a funding medium or investment which, under the particular circumstances, is not suitable for the plan. Thus, in the circumstances of a given case, an insurance agent who is a fiduciary with respect to a plan might be found to have breached his fiduciary responsibilities under section 404 of the Act and to have caused the plan to violate section 401(a) of the Code if he caused the plan to purchase individual insurance or annuity policies or other high commission products when similar benefits or protections could have been secured at a lesser cost to the plan (i.e., for lower premiums) under a group policy.

Further, while receipt of the disclosure required by the conditions of the exemption set forth below is expected to aid plan fiduciaries to evaluate recommendations made by persons selling insurance or mutual fund shares to the plan, such fiduciaries must still determine that the purchase of any insurance product or mutual fund shares for the plan satisfies the general fiduciary responsibility provisions of section 404(a)(1) of the Act. Such determination would require the evaluation of various factors not addressed in this exemption, such as, for example, whether the insurance product or mutual fund shares are an appropriate funding medium or investment for the particular plan involved.

General information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service must find that the exemption is administratively feasible, in the interests of the plan or plans and of their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plan or plans.

(3) The pending exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(5) The applications for exemption referred to herein are available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C., 20210 and in the Internal Revenue Service National Office Reading Room, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

All interested persons are invited to submit written comments on the pending class exemption set forth herein. In order to receive consideration, such comments should be received by the Department of Labor on or before January 27, 1977.

By notice appearing elsewhere in this issue of the FEDERAL REGISTER, the Department and the Service have announced that a public hearing will be held on February 14, 1977 with respect to the proposed class exemption and with respect to proposed regulations of the Department and the Service under sections 408(b)(2), 408(b)(4), 408(b)(6), 408(c)(2) and 414(c)(4) of the Act and sections 4975(d)(2), (4), (6) and (10) of the Code and 2003(c)(2)(D) of the Act, published in the FEDERAL REGISTER on July 30, 1976 (41 FR 31838, 31874). These proposed regulations relate to the provision of services and office space to plans, the investment of plan assets in bank deposits, the provision of bank ancillary services to plans, and the transitional rule for the provision of services to plans until June 30, 1977.

All written comments on the pending class exemption (at least six copies) should be addressed to Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room C-4526, Washington, D.C., 20216, Attention: Application No. D-183. All such comments will be made part of the record, and will be available for public inspection at the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20210, and at the Internal Revenue Service National Office Reading Room, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

PENDING EXEMPTION

Based on the applications referred to above, the Department and the Service have under consideration the granting of the following class exemption under the authority of section 403(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722:

Section I—Introduction. Effective January 1, 1975, the restrictions of sections 406(a)(1)(A) through (D) and 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the transactions described in section II of this exemption, provided that the conditions set forth in section III of this exemption are met.

Section II—Transactions. (a) The receipt of sales commissions from an insurance company, directly or indirectly, by an insurance agent or broker or a pension consultant in connection with the purchase of insurance contracts or annuities with plan assets when such insurance agent or broker or pension consultant is a service provider or fiduciary with respect to the plan.

(b) The receipt of sales commissions by a principal underwriter for an investment company registered under the Investment Company Act of 1940 (hereinafter referred to as a "mutual fund") in connection with the purchase of mutual fund shares with plan assets when such principal underwriter is a fiduciary or service provider with respect to the plan.

(c) The execution by an insurance agent or broker or pension consultant of a transaction for the purchase of insurance contracts or annuities with plan assets from an insurance company when

such insurance agent or broker or pension consultant is a fiduciary or service provider with respect to the plan and, in connection with the execution of such transaction, is acting as the agent of the insurance company.

(d) The purchase of insurance contracts or annuities with plan assets from an insurance company which is a party in interest or disqualified person (including a fiduciary) with respect to the plan solely by reason of providing services directly or indirectly to the plan, or which, by reason of a relationship described in section 3(14) (G), (H) or (I) of the Act or section 4975(e)(2) (G), (H) or (I) of the Code to an insurance agent or broker or a pension consultant, is a service provider or a fiduciary with respect to the plan.

(e) The purchase of mutual fund shares with plan assets from, or the sale of such shares to, a mutual fund or a principal underwriter with respect to a mutual fund, when such mutual fund or principal underwriter, or both, are parties in interest or disqualified persons (including fiduciaries) with respect to the plan by reason of providing services, directly or indirectly, to the plan.

Section III—Conditions. (a) The insurance agent or broker, pension consultant, insurance company, mutual fund or principal underwriter referred to in any of the paragraphs of section II above does not have any authority on behalf of the plan to retain or terminate the provision of services of such insurance agent or broker, pension consultant, insurance company, mutual fund or principal underwriter for the plan.

(b) Each of the transactions described in section II above, and any transactions in connection therewith for the purchase of insurance contracts or annuities or mutual fund shares with plan assets or the sale of mutual fund shares, is:

(1) On terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be; and

(2) Prior to the execution of the transaction, approved in writing on behalf of the plan by a fiduciary who is not an affiliate of the insurance agent or broker, pension consultant, insurance company, mutual fund, mutual fund principal underwriter, or mutual fund investment adviser and who does not receive, directly or indirectly, any compensation or other consideration for his or her own personal account in connection with any such transaction. Such approval must be based, in part, on the information disclosed pursuant to paragraph (e) of this section.

(c) The total of all fees and other consideration received by such insurance agent or broker, insurance company, pension consultant, or mutual fund principal underwriter for the rendering of services to the plan, plus commissions received in connection with the purchase of insurance contracts or annuities or mutual fund shares with plan assets, is not in excess of "reasonable compensation" within the contemplation of sections 408 (b)(2) and 408(c)(2) of the Act and sections 4975(d)(2) and 4975(d)(10) of the Code.

(d) With respect to any purchase of insurance contracts or annuities or mutual fund shares referred to in paragraphs (a), (b) and (c) of section II above, the insurance agent or broker, pension consultant, or mutual fund principal underwriter referred to in any of such paragraphs:

(1) Is a party in interest or disqualified person (including a fiduciary) with respect to the plan solely by reason of the provision of consultative, administrative or investment advisory services to the plan; and

(2) Effects the purchase of insurance or mutual fund shares in the ordinary course of its business as an insurance agent or broker, pension consultant, or mutual fund principal underwriter.

(e) With respect to any purchase of insurance contracts or annuities or mutual fund shares referred to in paragraphs (a), (b) and (c) of section II above, or any contract or agreement for such a purchase which is executed more than 60 days after the date of granting of this exemption, the insurance agent or broker, pension consultant or mutual fund principal underwriter provides to the fiduciary referred to in paragraph (b)(2) of this section, prior to the written approval described in paragraph (b)(2), written disclosure of the following information and such fiduciary acknowledges receipt of such written disclosure in writing:

(1) The names of all insurance companies and mutual funds with respect to which such insurance agent or broker, pension consultant or mutual fund principal underwriter is an affiliate, and a description of the nature of such affiliation.

(2) The amount of any sales commissions that will be received, directly or indirectly, by the soliciting agent in connection with the purchase of any insurance contracts or annuities or mutual fund shares which are recommended by the soliciting agent for purchase with plan assets. In the case of insurance, commissions should be disclosed as a percentage of gross premium payments for both first-year sales commissions and renewal commissions, if any. In the case of mutual funds, sales commissions should be disclosed as a percentage of the dollar amount of the plan't investment.

(3) With respect to any insurance contracts or annuities or mutual fund shares which are recommended by the soliciting agent, (i) if the soliciting agent has received any special instructions with respect to soliciting purchases of such contracts, annuities or shares (other than with respect to describing the characteristics of such contracts, annuities or shares) from any insurance agent or broker, pension consultant, insurance company, mutual fund, or principal underwriter, a description of such instructions, (ii) if the soliciting agent has a special incentive arrangement (other than the receipt of sales commissions) in connection with the sale of such insurance contracts or annuities or mutual fund shares, a statement that the soliciting agent has such an arrangement and, if requested by the aforementioned fiduciary, a description of such arrangement, and (iii) if the soliciting agent or an insurance agent or broker, pension consultant or mutual fund principal underwriter for which the soliciting agent is an employee has, for any of its three taxable years prior to the making of such recommendation by the soliciting agent, received more than 20 percent of its gross commissions from all sales of insurance or mutual fund shares for any such year from the insurance company or mutual fund whose insurance contract, annuity or shares are recommended, the soliciting agent must disclose such facts.

Once the disclosures required by this paragraph (e) have been made to the fiduciary described in paragraph (b)(2) of this section with respect to the purchase of insurance contracts or annuities or mutual fund shares, no further disclosure need be made with respect to additional purchases of such contracts, annuities, or shares with plan assets within three years subsequent to such disclosure, unless the commission or special incentive arrangement with respect to such additional sales of such contracts, annuities or shares is materially different from that for which the disclosure was made, or the contract, annuity or mutual fund is materially different from that for which the disclosure was made.

(f) Such records as are necessary to enable the persons described in paragraph (g) of this section to determine whether the conditions of this exemption have been met shall be maintained for a period of six years from the date of any transaction described in section II above, except that:

(1) This paragraph (f) and paragraph (g) below shall not apply to transactions effected prior to 60 days subsequent to the date of granting of this exemption; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, or of such insurance agent or broker, pension consultant, mutual fund principal underwriter or insurance company, such records are lost or destroyed prior to the end of such six-year period.

For transactions described in paragraphs (a) and (c) of section II above, such records shall be maintained by the insuranace agent or broker or pension consultant; for transactions described in paragraphs (b) and (e) of section II above, such records shall be maintained by the principal underwriter of the mutual fund; and for transactions described in paragraph (d) of section II above, such records shall be maintained by the insurance company.

(g) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) of this section are unconditionally available for examination during normal business

hours by duly authorized employees or representatives of (1) the Department ofof Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by the plan.

Section IV—Definitions. For purposes of this exemption:

(a) The term "principal underwriter" is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29)).

(b) The terms "fiduciary", "service provider", "insurance agent or broker," "pension consultant", "insurance company", "mutual fund", and "principal underwriter" include such persons and any affiliates thereof.

(c) The term "soliciting agent" means the individual who solicits the purchase of the insurance contract or annuity or the purchase of mutual fund shares.

(d) The term "affiliate" of a person includes:

(1) Any person directly or indirectly controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee or relative of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) the term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "special incentive arrangement" means an arrangement whereby consideration is available or payable (directly or indirectly) to a soliciting agent because of the insurance agent's or broker's, pension consultant's, or mutual fund principal underwriter's contractual relationship with an insurance company or mutual fund, and not an arrangement whereby consideration is available to any soliciting agent who sells a product of that insurance company or mutual fund.

Signed at Washington, D.C., this 22d day of December, 1976.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

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